Supreme Court, U.S.
FILED
SEP 10 1979
MICHAEL RODAK, JR., CLERK

79-403

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

**No.-1127**

OWEN W. CRUMPACKER,

*Petitioner,*

*v.*

INDIANA SUPREME COURT
DISCIPLINARY COMMISSION
and SAUL I. RUMAN, COMPLAINANT,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA (SEPARATE APPENDIX SUBMITTED)

Andrew G. Kohlan, Esq.
236 Rice Creek Blvd.
Fridley, Minn. 55432
Attorney for Petitioner

Page

TABLE OF CONTENTS

OPINION BELOW.....2

JURISDICTION.....2

QUESTIONS PRESENTED.....3

1. Does the Federal Constitution shield the petitioner attorney against state disbarment (permanent) and incorporate due process, equal protection and other safeguards in the Constitution, Statutes, and Rules of the State.....3

2. Can the Supreme Court and Disciplinary Commission of Indiana lawfully ignore the exonoration of an attorney made by determination of the State hearing officer, the limits on review under the State's own Rules of Procedure, the record, proceedings favorable to the attorney, and, nevertheless, render disbarment (total) without notice and opportunity to petitioner (first) to be heard upon (such) order of disbarment.....3

3. Should the United States Supreme Court exercise review in certiorari upon disbarment by a State Court of attorney member of State, Federal District Courts, Court of Appeals, and the United States Supreme Court.....3

CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT RULES INVOLVED.....4

STATEMENT OF THE CASE.....6

REASONS FOR GRANTING THE WRIT.....13

CONCLUSION.....24

JUDGEMENT OF SUPREME COURT SOUGHT TO BE REVIEWED.....25

ORDER OF THE INDIANA SUPREME COURT DENYING MOTION FOR RELIEF.....26



CITATIONS

Cases — Page

Greene v. McElroy, et al., 360 U.S. 474, 79 S.Ct. 1400 (1959).....20

In the Matter of John Ruffalo, Jr., Petitioner, 390 U.S. 59, 88 S.Ct. 1222, (1968).....18, 20

In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948).....20

Konigsburg, Petitioner, v. The State Bar of California, et al., 353 U.S.252, 77 S.Ct. 722 (1957).....19

Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158, 84 ALR 527 (1932).....21

Schware, Petitioner, v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 77 S.Ct. 352 (1957).....18

Selling, et al., v. Radford, 242 U.S. 246, 37 S.Ct. 377 (1916).....21

In the Matter of Owen W. Crumpacker, ___Ind.___, 383 N.E.2d 36 (1978).....2

Statutes & Court Rules

Amendment I, Constitution of the United States of America.....4

Amendment XIV, Constitution of the United States.....4, 12

Ind. Code, Constitutions, Bill of Rights, Section 9.....4

Section 10.....5

Section 11.....5

APPENDIX A.

(Separate Volume)

Supreme Court of Indiana Order of April 12, 1979 Overruling Petitioner's Motion for Relief From and Reconsideration of the Disciplinary Action Entered on November 29, 1978.....A1

U.S. Supreme Court Order of June 28, 1979 Extending Time to File Petition for Writ of Certiorari.....A3

Indiana Supreme Court's Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations Filed With the Supreme Court Clerk on November 8, 1976.....A5-A19

Findings.....A7
Counts I, II, and III.....A7
Count IV A.....A9
Count IV B.....A9
Count V.....A10
Count VI.....A11
Count VII.....A11
Count VIII.....A12
Count IX.....A12
Count X.....A13
Count XI.....A13
Count XII.....A14
Count XIII.....A15
Count XIV.....A15
Count XV.....A16
Count XVI and XVII.....A16
Count XVIII.....A17
Count XIX.....A18
Conclusions and Recommendations.....A18

Per Curiam Disciplinary Action Filed by the Indiana Supreme Court on November 29, 1978, Resulting in the Permanent Disbarment of Petitioner.....A20-A77



1977 Requiring Parties Seeking a Review to File Transcripts on Alleged Factual Issues.....A84

Excerpts from the Verified First Defense Served and Filed by Petitioner on December 18, 1978, Presenting Substantial Federal Questions Arising Under the Bill of Rights of the U.S. Constitution and Art. I, Bill of Rights, Indiana Constitution.....A85

Excerpts From the Verified Motion for Relief From and Reconsideration of The Disciplinary Action Entered on November 29, 1978, Presenting Substantial Federal Questions to the Indiana Supreme Court Arising Under the Due Process and Equal Protection Clauses of the U. S. Constitution.....A113

Counts I and II.....A29
Counts III and V.....A33
Count VI.....A38
Counts XI, XII, and XIII.....A39
Count XIV.....A46
Counts IV (A) and IV (B).....A48
Count IV (B).....A53
Count VII.....A54
Count VIII.....A55
Count IX.....A57
Count X.....A59
Count XV.....A62
Counts XVI and XVII.....A66
Counts XVIII and XIX.....A68
Disbarment Order.....A71
Footnotes.....A72

Indiana Supreme Court Disciplinary Rules.....A78

Section 2.....A78
Section 10. Investigatory Procodures.....A78
Section 12. Prosecution of Grievances.....A80
Section 13. Hearing Officers.....A80
Section 14. Proceedings Before the Hearing Officers.....A81
Section 14 (d). Duty of Hearing Officer to Weigh the Evidence, Determine whether Misconduct Has Been Proven, and Submission of the Written Findings of Fact, Deduced From the Evidence to the Supreme Court.....A82
Section 15. Supreme Court Review.....A82
Section 15 (c). Necessity of Determination by the Supreme Court as to Whether or Not a Petition for Review Will be Granted.....A83
Section 15 (d). Amendment to A & D Rule Adopted on January 1,



Section 12.....5, 14
Section 13.....5

Ind. Code, Court Rules, Book 2, A D 23.....6, 8
Section 10.....7
Section 14(d).....14
Section 15.....15
Section 15(c).....11, 14

28 U. S. C. § 1257(3).....3

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

---

No. _____

---

OWEN W. CRUMPACKER,

Petitioner,

vs.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT,

Respondents.

---

# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

---

Petitioner, Owen W. Crumpacker, prays that a writ of certiorari be granted to review the judgment of the Supreme Court of Indiana entered in this case on November 29, 1978.

## OPINIONS BELOW

The per curiam Opinion of the Supreme Court of Indiana is not reported officially, but is unofficially reported in the Northeastern Reporter. In the Matter of Owen W. Crumpacker, ___Ind.___; 383 N.E.2d 36 (1978). It is reprinted in the Appendix. The findings of fact, conclusions of law, and recommendations of the Indiana Supreme Court's Hearing Officer, Judge Bruce W. Douglas, filed on November 9, 1976, are not reported but are reprinted at pages A5 through A19 in the Appendix. The Indiana Supreme Court's Order of April 12, 1979, denying rehearing and reconsideration, also per curiam, Hon. Alfred J. Pivarnik not participating, is reprinted in the Appendix at page A1.

## JURISDICTION

The final judgment of the Indiana Supreme Court permanently disbarring petitioner as a practicing lawyer was entered on November 29, 1978. A Motion for Rehearing and Reconsideration was overruled and denied on April 12, 1979. Petitioner's application for an extension of time was granted and the time for filing a petition for a writ of certiorari extended through and including September 9, 1979 (a Sunday).



This Court has jurisdiction under 28 U. S. C. § 1257(3).

## QUESTIONS PRESENTED

1. Does the Federal Constitution shield the petitioner attorney against state disbarment (permanent) and incorporate due process, equal protection and other safeguards in the Constitution, Statutes, and Rules of the State?

2. Can the Supreme Court and Disciplinary Commission of Indiana lawfully ignore the exonoration of an attorney made by determination of the State hearing officer, the limits on review under the State's own Rules of Procedure, the record, proceedings favorable to the attorney, and, nevertheless, render disbarment (total) without notice and opportunity to petitioner (first) to be heard upon (such) order of disbarment?

3. Should the United States Supreme Court exercise review in certiorari upon disbarment by a State Court of attorney member of State, Federal District Courts, Court of Appeals, and the United States Supreme Court?

## CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT RULES INVOLVED

Amendment I to the Constitution of the United States provides in pertinent part as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment XIV to the Constitution of the United States provides in pertinent part as follows:

> "Section 1.
>
> * * * * * * * * * * * * * * * * * * * *
>
> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Constitution of the State of Indiana, Article I, Bill of Rights, provides in pertinent part as follows:

> "Section 9. Free Speech and writing. No law shall be passed, restraining



> the free interchange of thought and opinion, or restricting the right to speak, write or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible."
>
> "Section 10. The truth in libel. In all prosecutions for libel, the truth of the matters alleged to be libellous may be given in justification."
>
> "Section 11. Unreasonable search or seizure. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."
>
> "Section 12. Courts open - Due course of law - Administration of Justice. All Courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay."
>
> "Section 13. Rights of accused. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet

the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor."

Burns Indiana Statutes Annotated, Code Edition, Court Rules, Book 2, Part VI, Rules for Admission to the Bar and the Discipline of Attorneys, Admission and Disciplinary Rule 23, Disciplinary Commission and Proceedings, provides in pertinent part as follows:

(The pertinent text is set forth in the Appendix at pages A78 through A84.)

## STATEMENT OF THE CASE

Richard H. Grabham, Executive Secretary, Indiana Supreme Court Disciplinary Commission, on September 17, 1974, filed his Verified Complaint for Disciplinary Action pursuant to Supreme Court of Indiana A & D Rule 23, Section 12, in Twenty (20) Counts seeking an order that petitioner Owen W. Crumpacker, a practicing attorney, admitted to the bar of the Supreme Court of the State of Indiana on January 4, 1939, and actively engaged in the practice of law with offices in the City of Hammond, Lake County, Indiana, be disbarred or disciplined for



professional misconduct as specified in Counts I through XX of said complaint.

Prior to the institution of informal proceedings against him in the Supreme Court of Indiana in the form of an ex parte letter to the Chief Justice, dated January 27, 1972, by one Edmond J. Leeney, now deceased, petitioner had never been charged with misconduct of any kind, either by way of misdemeanor, felony, or otherwise, nor had any steps been instituted against him before any official or unofficial body charging him with unprofessional conduct.

The proceedings were instituted at the administrative level on September 25, 1973 by respondent Saul I. Ruman, a practicing attorney of Hammond, Indiana. Ruman filed a Verified Complaint (grievance) with the Disciplinary Commission pursuant to A & D Rule 23, Section 10. The complaint was prepared with the assistance of two Hammond attorneys, Kenneth D. Reed and Harold Abrahamson, associates and partners of petitioner, practicing with him prior to January 13, 1973, under the firm name and style of Crumpacker, Abrahamson & Reed. Between September 25, 1973, when respondent Ruman filed his verified complaint, and June 14, 1974, when the Disciplinary Commission resolved to proceed against petitioner on the Saul I. Ruman complaint, Reed and Abrahamson had been in private, secret communication

with the respondent Commission. Although petitioner responded to the complaint as required by A & D Rule 23, he was never interviewed or requested to furnish any evidentiary matter to the Commission or its representatives. Petitioner first learned that formal charges were made against him in the Supreme Court when the filing of the Verified Complaint in the Supreme Court was published in the Indianapolis Star and Gary Post-Tribune on September 18, 1974.

Between September 17, 1974 when the Disciplinary Commission filed its verified complaint, supra, and September 29, 1975 when the case was submitted for trial before Judge Bruce W. Douglas, extensive proceedings were conducted before the first Hearing Officer, Judge Allan Rasor of the Kosciusko Superior Court, whose written request to resign was granted by the Supreme Court on August 27, 1975.

The cause was submitted to Judge Bruce W. Douglas, as Hearing Officer, on the issues formed by the Amended Verified Complaint for Disciplinary Action filed on June 25, 1975, the petitioner's Verified First Defense (addressed to all Twenty (20) Counts of the charges set forth in the affidavit or indictment of the Disciplinary Commission), evidence heard on September 29, 30, October 1, 2, 3, 6, 7, 8 , 9, 10, 20, 21, 22, 23, 24, 28, and 29, November 5, 6, 7, 10, 11, 12



13, 18, 19, 20, and 21, and December 1, 2, and 3, 1975, and the cause continued for further proceedings by stipulation and agreement of the parties because of the pressure of local court business. At the instance of Judge Douglas petitioner was authorized to submit additional exhibits to the court, copies to respondents, who were given the right to object to their admissibility by mail.

Petitioner procured and paid for a duplicate of the court reporter's transcript on a daily copy basis, some 4700 pages in length, prepared copies of the thousands of pages of documentary exhibits, and, pursuant to the request of Judge Douglas, and, by agreement of the parties, petitioner and his lawyers, John Lyons and Richard A. Miller, prepared, served and filed extensive proposed findings of fact, with detailed record references to the testimony in the transcript and the documentary evidence supporting the proposed findings. In addition, petitioner and his counsel served and filed an extensive brief on the applicable law.

On November 9, 1976, Judge Douglas, the Hearing Officer, entered his findings of fact, conclusions of law, and recommendations. (All in petitioner's favor). Petitioner was found innocent on each of the 20 counts of alleged

professional misconduct made against him. (Appendix, pages A5 thru A19.)

The entry of the Clerk of the Supreme Court in Cause No. 974 S 187 under date of November 9, 1976, is as follows:

> "Defendants Exhibits "A" thru "ZZZ" (Box sealed, didn't open) Plaintiff Exhibits in a green box (Sealed; didn't open).
> Findings of Fact, Conclusions of Law, and Recommendations of Hearing Officer.
> Motions and Orders. Transcript in seven (7) Volumes.
> Plaintiff's Exhibits 31 thru 40.
> Correspondence and Pleadings previously filed."

On December 3, 1976 respondent Disciplinary Commission filed its petition for an extension of time in which to file its petition for review of the Hearing Officer's findings of fact, conclusions of law and recommendations. Respondent Saul I. Ruman filed a similar petition shortly thereafter, Between December 3, 1976 and January 23, 1978 when the Supreme Court entered an order granting petitioner leave to file extensive supplemental objections to the petitions to review (attaching copies of petitioner's first, second and third defenses to the same together with excerpts from the court reporter's transcript supporting the objections), petitioner and his counsel prepared, served and filed extensive briefs demonstrating, again with specific reference to the 4700 page transcript and the exhibits on file in the clerk's office, why the petitions for review should not be granted.



The Supreme Court never acted upon the respondent's petitions to review as required by A & D Rule 23, Section 15 (c) reading as follows:

> "(c) In the event that this Court grants a petition under this Section 15, briefs may be filed and oral arguments heard, as the Court shall determine. . . ."
> (Our emphasis)
>
> (Appendix, page A83)

Neither of the respondents challenged the Hearing Officer's findings in the manner required by the amendment to Section 15 (c) as adopted by the Supreme Court of Indiana on January 1, 1977. (See Appendix, page A84) No proceedings were held and had in the Supreme Court of Indiana after January 23, 1978 when petitioner's supplemental objections to the petition to review were filed and November 29, 1978 when the disbarment order (Disciplinary Action) was filed with the clerk. Petitioner had no notice of the intended action to be taken against him by the Supreme Court of Indiana nor was he afforded any hearing on the purported recitations of evidence and conclusions set out in the 27 page Disciplinary Action. Had petitioner been given an opportunity to be heard, he could have demonstrated that the so-called

recitation of evidence and purported facts were not true.

The Stages In The Proceedings Where The Federal Questions Sought To be Reviewed Were Raised And The Way In Which The Supreme Court of Indiana Passed Upon The Same.

Petitioner raised substantial federal questions, including due process and equal protection of the laws in a motion to dismiss filed on November 4, 1974. It was overruled in an order entered on November 14, 1974. On December 18, 1974, in his first verified defense, petitioner, again, raised the federal constitutional questions. (See Appendix, pages A85 Thru A112) The Supreme Court, in the Disciplinary Action filed on November 29, 1978, determined that the first affirmative defense "As it stands without specificity, does not present a issue for determination by this Court." (Appendix, pages A21 & A22). On February 10, 1979, petitioner raised, in detail, the substantial federal constitutional questions presented to this court, supra, in a motion for rehearing. (See Appendix pages A113 thru A115) The Indiana Supreme Court overruled and denied the motion in its order of April 12, 1979. (Appendix, Pages A1 & A2) The portions of the record relied upon are voluminous and are included and separately presented in the Appendix filed simultaneously with this petition.



## REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER COURTS, OF THE INDIANA COURT ITSELF, OF DUE PROCESS, EQUALITY, AND RIGHTS OF THE ATTORNEY AS A CITIZEN.

The practice of law is accorded by the courts. It is not a matter of right of every citizen. However, once granted and exercised (as in this case for nearly 40 years) an attorney has the right of continuance of practice. It is subject only to termination by disbarment in an orderly and prescribed procedure; the (accused) attorney is clothed with due process, equality, common fairness, and other safeguards of our Constitution(s), Statute(s) and Rule(s), both Federal and State, the same as any other citizen. In the instant case, a close, complete and critical examination of the total record discloses that such safeguards have been denied. Thus, certiorari is petitioner's only means of relief.

Due process and equal protection under the Federal Constitution include the safeguards of the local law--and a citizen of Indiana obtains under Federal Court protection the safeguards of Indiana law.

In Indiana discipline is administered under rules adopted and provided by the Court, to afford

due process. The right of procedural due process, as applied to the states by the XIV Amendment of the Constitution of the United States, and as applied in Indiana under Article I, Section 12 of the State Constitution, and such Rules of Procedure , includes notice and the opportunity to be heard. The notice and opportunity to be heard (to safeguard the citizen), to be effective, should be accorded at every critical stage of the proceeding. This rule is well recognized by other courts; it apparently has here been ignored by the Indiana Supreme Court.

The Supreme Court of Indiana, by its own procedural rules previously adopted (See Admission and Disciplinary Rule 23, Section 14(d), Appendix page A82) has provided (in disciplinary proceedings) for a trial hearing before a trial hearing officer, and for review of findings adverse to the accused of such hearing officer (see Admission and Disciplinary Rule 23, Section 15(c), Appendix page A84). Under A & D Rule 23, Section 14(d) noted above, it appears that the duty of finding and determining misconduct on the part of the attorney is placed specifically and exclusively upon the hearing officer, and that if no misconduct is found and determined by the hearing officer against the accused attorney, then there is no matter for review; and that under its Rules (noted above) the Supreme Court of Indiana has limited further ac-



tions on its part in review to cases only where the hearing officer has (himself) first made a ruling and determination adverse to and against the accused attorney. Here, in the instant case, the Supreme Court of Indiana has ignored such rule and its limit.

To the best ability of petitioner, in his search of precedent, petitioner finds that in no similar proceeding has the Supreme Court of Indiana acted under its rules of review (as set forth in A & D Rule 23, Section 15 thereof) other than in accordance with the findings and report of such hearing officer (except to act more favorably to the accused). Nowhere has the Court previously found misconduct to be proved where no such finding was made by the hearing officer. In the instant case the Supreme Court of Indiana has now totally ignored the findings of fact, conclusions of law, and determination of its own trial hearing officer who found there was no proof of misconduct by petitioner herein. He exonerated the accused (petitioner). The action of the Supreme Court of Indiana thereafter apparently contravened its own rules.

Also, it appears the Indiana Court, on its own, acted and "reached out" (in some respect) without and outside the record (which it apparently did not use), and made different adverse findings,

independent and contrary to the findings of the hearing officer. (The office of the Clerk of the Supreme Court of Indiana evidences no transmission of the Record to the Supreme Court itself from the custody of the Clerk). It appears the Court made the determination privately and without record, to disbar the petitioner (by the Order of November 29, 1978). In consequence, due process previously accorded to petitioner was short-lived and not effective, to the protection of the petitioner on November 29, 1978.

The Supreme Court of Indiana here has ignored precedent and its own rules (e.g. procedure on review). It has denied due process and, as well, equal protection to the accused.

The Supreme Court of Indiana, in making such order of disbarment against the accused, has acted totally contrary to the determination of the trial hearing officer and without notice to the accused. Such order of disbarment was made without giving accused prior notice thereof, and no opportunity (then) to be heard upon and before such order was entered. The Supreme Court of Indiana in effect "critically" denied due process. It refused reconsideration arbitrarily.

Petitioner states that once the report of the hearing officer was made and received by the Supreme Court of Indiana favorable to the accused, the Court of Indiana could not lawfully then ignore



its own rules of review and due process thereon previously provided and equal protection to be afforded with respect to petitioner and such disciplinary proceedings. Also, in no event could the Court in such proceedings reach a conclusion and determination adverse to the accused and contrary to that reached by the hearing officer, without, in any event, further proceedings against the accused and notice first given and the opportunity to be heard (thereon).

If due process and equal protection under the Federal Constitution and as well the Indiana Constitution, Statutes and Rules is to be observed, all such was required.

From the above, it should appear that Question 1 (above) should be answered: "Yes", and Question 2 (above) answered: "No". Petitioner states that the safeguards required by law were denied, that the actions of the Supreme Court of Indiana are arbitrary and discriminatory, and that justice has not been done to petitioner. CERTIORARI SHOULD BE GRANTED.

2. THE ACTIONS BY THE SUPREME COURT OF INDIANA CAN BE REDRESSED ONLY BY CERTIORARI.

The 3rd Question (noted first hereinabove under Questions Presented) should be answered: "Yes". Certiorari should be granted.

Petitioner recognizes that except and unless a "Federal Question: is concerned and raised, and the action of the State Court thereon is in error, and the rights of a citizen are adversely affected, the actions of the State Court are final.

Here petitioner asserts that at all stages of the proceedings against him, he (petitioner) asserted and raised both formally (by timely motion) and informally, his constitutional rights as a citizen of the State of Indiana, and as well under the Constitution and laws of the United States of America, and each time his claim was denied.

The Supreme Court of the United States did little for years to provide relief against actions of a State Court relating to admission and disbarment from a State bar. (More) current decisions amply demonstrate, however, that there are lawful reasons under Federal principles why jurisdiction of the United States Supreme Court can and should attach, and the United States Supreme Court become involved in such a case. The United States Supreme Court has already done so in several instances, among which are:

In the Matter of John Ruffalo, Jr., Petitioner (1968), 390 U.S. 59, 88 S.Ct. 1222 (disbarment).

Schware, Petitioner, v. Board of Bar Examiners of the State of New Mexico (1957), 353 U.S. 232, 77 S.Ct. 352 (denial of admission).



Konigsburg, Petitioner v. The State Bar of California, et al. (1957), 353 U.S. 252 (denial of admission).

In some instances the United States Supreme Court has attached review upon a narrow technical point of law. More often the attention of the Court has been reached upon a full disclosure of the facts, which reveal "inherent" error and "manifest injustice", committed or tolerated by the State Courts which manifest denial of due process. Here, one should know that so far as the proceedings below are concerned, the petitioner (Crumpacker) was wholly exonerated and cleared of all charges made against him by the trial hearing officer appointed by the State Supreme Court of Indiana on all facts, and without limitation.

In effect, the accused (petitioner here) was wholly "Acquitted" by the "Trial Court". Yet, the petitioner, nevertheless, was thereafter permanently disbarred. This is a result which the Indiana Supreme Court could have reached, under the circumstances, only in the exercise of "arbitrary powers", not law.

A person has a right to be free from unauthorized actions of government officials which substantially impair his property interests, such as his livelihood. When governmental actions seriously injure an individual the reasonableness of that action depends upon the fact finding used to prove

the government's case, which must be disclosed so one has an opportunity to show it is not true. Rights of confrontation, cross-examination, and all such rights apply not only in criminal cases, but all types where administrative and regulatory actions are concerned. This protection was well stated in Greene vs. McElroy (1959), 360 U.S. 474, 79 S.Ct. 1400.

That the trial hearing officer found for the accused (attorney) upon all the charges made demonstrates and suggests that the actions of the accused attorney were not acts of misconduct. That complainants and others might argue otherwise is not sufficient for due process. The accused (attorney) is to know early, and before such acts are done, that they give grounds for a charge of misconduct. To raise such acts as misconduct after they are done and before the accused has reason to know that they will be treated thereafter as misconduct is not due process. The Supreme Court of the United States has already recognized this fact as evident from the Court's action in Ruffalo, Jr., (Supra) and In re Oliver (1948), 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682, which alone, and without recitation of others, strongly cites such prior knowledge as an essential of due process.

There is now involved the factual issue of the right of the petitioner to exercise his profession



and to continue his means of livelihood. An arbitrary denial of such right by the Supreme Court of Indiana clearly gives Constitutional grounds for the United States Supreme Court to act herein.

Should this Court now pass an opportunity for review, the Court may on its own be compounding an injury by its own inactions, the same as the Indiana Court has already caused injury to the petitioner by its arbitrary and unlawful action. In Powell v. Alabama (1932), 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158, 84 ALR 527, this Supreme Court noted that judicial inaction which fails to protect constitutional rights may be as serious as affirmative action which denies such rights.

Here, petitioner is a member of the Federal bar, and its component district and circuit court bars, as well as the Supreme Court of the United States. It is certain that at some time following this Court will be called upon to consider and rule upon a "Federal disbarment" of Crumpacker. The United States Supreme Court recognized a duty to the attorney in Selling, et al. v. Radford (1916), 242 U.S. 246, 37 S.Ct. 377, which, for reasons well noted therein, states that an opportunity for hearing to a member of the Bar of the Supreme Court of the United States should be afforded before the United States Supreme Court where disbarment in the United States Supreme Court is sought

on grounds of previous disbarment by a State Court, (suggesting that due process, once denied, ought not to be continued against challenge). Delay in such consideration of the rights of Crumpacker can serve only to his prejudice. Records may be lost; facts forgotten; death occur; and all later present and available is the bare record of the Order of the Indiana Supreme Court. Relief to Crumpacker at such later date will not be possible.

A close critical examination of the total record below discloses that the "misconduct" charged against the accused was discourtesy between counsel, and more properly a "dispute" of one kind or another which first was with his law office partners, and then which was enlarged and involved others. By acts and conduct of the parties concerned (the accused attorney and the other complainants) the disputes were enlarged to a claim of grievance. None of the acts and incidents should have been elevated to the level of a "grievance". Such, in effect, was the ruling of the trial hearing officer who wholly exonerated the petitioner against charges of professional misconduct.

Conduct which may be discourteous, noisome, or the like, even if disapproved by others, even a court, but which is absent of fraud and which does not evidence moral turpitude, which does not ob-



struct and hinder administration of justice, and truly does not reflect upon the courts and the bar, is not conduct fit for "professional grievance" for which the sanction of disbarment is to be layed upon the accused. This is how the trial hearing officer found and what he held upon the hearing. The petitioner now is not to be delivered to the "Tower" and "summarily executed", so far as his continued life as a practicing lawyer is concerned.

The Supreme Court of Indiana, for its own reasons, has exceeded its powers and its need. It has acted unlawfully. Petitioner should receive relief.

In legislative bodies, if orderliness of action need be preserved, "admonishment", even "censure", might at times be rendered. "Expulsion" occurs only in the harshest cases. The instant case in itself denies "equality" and "due process". Certiorari should be granted. To do otherwise is to ignore wholly and completely the "exoneration" of petitioner's conduct, as made by the State trial hearing officer, who was himself appointed by the Indiana Supreme Court as its representative officer.

The Supreme Court of Indiana should not deprive the petitioner of his standing before the courts. Certiorari should be granted.

## CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Indiana, made herein on November 29, 1978.

RESPECTFULLY SUBMITTED,

ANDREW G. KOHLAN, Esq.
Attorney at Law
236 Rice Creek Blvd.
Fridley, MN 55432



IN THE

SUPREME COURT OF INDIANA

Filed
Nov. 29, 1978

IN THE MATTER OF )
OWEN W. CRUMPACKER ) Cause No. 974 S 187

---

DISCIPLINARY ACTION

---

PER CURIAM

* * * * * * * *

In light of the above considerations, this Court is forced to conclude that the strongest sanction available under the Constitution of the State of Indiana must be imposed to preserve the integrity of the legal profession and to protect the public from future acts of misconduct as found in this case. It is therefore ordered that by reason of the misconduct found in this cause the Respondent be, and he hereby is, disbarred as an attorney in the State of Indiana.

Costs of these proceedings are assessed against the Respondent.

Pivarnik, J., not participating.

IN THE

SUPREME COURT OF INDIANA

Filed
April 12, 1979

IN THE MATTER OF )
)
OWEN W. CRUMPACKER )

Cause No. 974 S 187

ORDER DENYING MOTION FOR RELIEF

Comes now the Respondent and tenders for filing his motion for relief from and reconsideration of the disciplinary action entered on November 29, 1978.

And this Court, being duly advised, finds that the pleading should be accepted for filing, but further finds that the relief prayed for in this motion should not be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by this Court that "Respondent Owen W. Crumpacker's Motion for Relief from and Reconsideration of the Disciplinary Action Entered on November 29, 1978" is hereby DENIED.

DONE at Indianapolis, Indiana, this 12 day of April 1979.

/s/ Richard M. Givan
Richard M. Givan
Chief Justice of Indiana



All participating Justices concur.

Pivarnik, J., not participating

Supreme Court, U. S.
FILED
SEP 10 1979
MICHAEL RODAK, JR., CLERK

79-403

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

**No. A-1127**

OWEN W. CRUMPACKER,

*Petitioner,*

*vs.*

INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT

*Respondents.*

## PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

Andrew G. Kohlan, Esq.
236 Rice Creek Blvd.
Fridley, MN 55432
Attorney for Petitioner

APPENDIX A.

Supreme Court of Indiana Order of April 12, 1979 Overruling Petitioner's Motion for Relief From and Reconsideration of the Disciplinary Action Entered on November 29, 1978..... A1

U. S. Supreme Court Order of June 28, 1979 Extending Time to File Petition for Writ of Certiorari..... A3

Indiana Supreme Court's Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations Filed With the Supreme Court Clerk on November 9, 1976..... A5 - A19

Findings..... A7

Counts I, II, and III..... A7

Count IV A..... A9

Count IV B..... A9

Count V..... A10

Count VI..... A11

Count VII..... A11

Count VIII..... A12

Count IX..... A12

Count X..... A13

Count XI..... A13

Count XII..... A14

Count XIII..... A15

Count XIV..... A15

Count XV..... A16
Count XVI and XVII..... A16
Count XVIII..... A17
Count XIX..... A18
Conclusions and Recommendations..... A18
Per Curiam Disciplinary Action Filed by the Indiana Supreme Court on November 29, 1978 Resulting in the Permanent Disbarment of Petitioner..... A20 - A77
Counts I and II..... A29
Counts III and V..... A33
Count VI..... A38
Counts XI, XII, and XIII..... A39
Count XIV..... A46
Counts IV (A) and IV (B)..... A48
Count IV (B)..... A53
Count VII..... A54
Count VIII..... A55
Count IX..... A57
Count X..... A59
Count XV..... A62
Counts XVI and XVII..... A66
Count XVIII and XIX..... A68
Disbarment Order..... A71
Footnotes..... A72
Indiana Supreme Court Disciplinary Rules... A78
Section 2..... A78
Section 10. Investigatory Procedures... A78



Section 12. Prosecution of Grievances.. A80
Section 13. Hearing Officers..... A80
Section 14. Proceedings Before the Hearing Officers..... A81
Section 14 (d). Duty of Hearing Officer to Weigh the Evidence, Determine Whether Misconduct Has Been Proven, and Submission of the Written Findings of Fact Deduced From the Evidence to the Supreme Court..... A82
Section 15. Supreme Court Review..... A82
Section 15 (c). Necessity of Determination by the Supreme Court as to Whether or Not a Petition for Review Will be Granted..... A83
Section 15 (c). Amendment to A & D Rule 23 Adopted on January 1, 1977 Requiring Parties Seeking a Review to File Transcripts on Alleged Factual Issues..... A84
Excerpts From the Verified First Defense Served and Filed by Petitioner on December 18, 1978 Presenting Substantial Federal Questions Arising Under the Bill of Rights of the U.S. Constitution and Art. I, Bill of Rights, Indana Constitution..... A85

Excerpts From the Verified Motion for
Relief From and Reconsideration of
The Disciplinary Action Entered on
November 29, 1978 Presenting Sub-
stantial Federal Questions to the
Indiana Supreme Court Arising Under
the Due Process and Equal Protection
Clauses of the U.S. Constitution..... A113

APPENDIX

Filed
April 12, 1979

IN THE
SUPREME COURT
OF INDIANA

IN THE MATTER OF )
) Cause No. 974 S 187
OWEN W. CRUMPACKER )

ORDER DENYING
MOTION FOR RELIEF

Comes now the Respondent and tenders for filing his motion for relief and reconsideration of the disciplinary action entered on November 29, 1978.

And this Court, being duly advised, finds that the pleading should be accepted for filing, but further finds that the relief prayed for in this motion should not be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by this Court that "Respondent Owen W. Crumpacker's Motion for Relief from and Reconsideration of the

Disciplinary Action Entered on November 29, 1978" is hereby DENIED.

DONE at Indianapolis, Indiana, this 12th day of April, 1979.

/s/ Richard M. Given
Richard M. Given
Chief Justice of Indiana

All participating Justices concur.

Pivarnik, J., not participating.



IN THE

SUPREME COURT OF THE UNITED STATES

No. A-1127

OWEN W. CRUMPACKER,

Petitioner,

v.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION, ET AL.

---

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

---

Upon Consideration of the application of petitioner, It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 9, 1979.

/s/ John Paul Stevens
Associate Justice of the Supreme
Court of the United States

Dated this 28

day of June, 1979.



IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN RE: THE MATTER OF )
OWEN W. CRUMPACKER, ) 974-S-187
An Attorney )

FINDINGS OF FACT
CONCLUSIONS OF LAW, AND
RECOMMENDATIONS OF HEARING OFFICER

The Indiana Supreme Court Disciplinary Commission filed its Amended Complaint for Disciplinary Action against Owen W. Crumpacker, hereinafter referred to as Respondent, on June 25, 1975. The undersigned was appointed Hearing Officer, qualified and assumed jurisdiction. The Amended Complaint contained 19 Counts. Evidentiary hearing commenced September 29, 1975, and concluded on December 3, 1975. Additional documentary evidence was received up and until the 3rd day of February, 1976. Approximately 31 days were taken up with the evidentiary hearing. Documentary evidence offered and admitted was voluminous. The Disciplinary Commission was represented by Attorneys David B. Hughes and Craig Stevens. Respondent appeared pro se, by counsel Richard A. Miller, and during Respondent's case in chief, by additional counsel John M. Lyons.

As required by law, the Hearing Officer will make findings of material fact, conclusions of law and recommendations. However, before attempting this task, a few preliminary comments and findings

are necessary.

Respondent has practiced law in northern Indiana for over 30 years and until January of 1973, headed the law firm of Crumpacker, Abrahamson and Reed in Hammond, Indiana. The partnership dissolved January 1, 1973; said termination was stormy.

Many of the charges against Respondent can be directly traced to the unsatisfactory partnership termination. There were disputes, and I believe some honest ones, concerning accounts, clients, and pending litigation. These disputes have never been resolved through court action; and the Hearing Officer could not resolve them here.

It was evident from the start that this proceeding wasn't the typical disbarment hearing. For this reason, the Hearing Officer's attitude on the introduction of evidence was liberal. Respondent strongly resented the hearing, which fact made it difficult for all. He honestly believes that many attorneys and Judges are out to crucify him. He further believes that he is one of the few remaining honest attorneys in Lake County, Indiana. Similar to Don Quixote, he attacks the windmills: a crusader.

This case is decided on the merits of each Count. Before undertaking this, it is necessary to note some legal questions which have some merit. Most of these, Respondent discusses in his brief: (A) Questions concerning the



procedures in the investigative stages; (B) Respondent's conduct took place directly in other litigation which is still pending; (C) Partnership disputes have not been resolved; (D) Distinctions between disbarment proceedings and contempt proceedings, and the purposes of both. He believes the "wolf pack" is on the game; this belief has merit. However, his conduct contributed strongly to the situation.

## F I N D I N G S

COUNTS I, II, and III:

These charges are connected with the litigation described as Dedelow, Inc. et al -vs- Board of Commissioners of Lake County, et al, Lake Superior Court, Cause No. 171-43, Room 1, Hammond. This litigation was under the Public Lawsuit Statute and was filed in 1971 by Kenneth Reed, law partner in the firm of Crumpacker, Abrahamson and Reed; Respondent was the senior partner of the firm. This basically was Mr. Reed's case and the action was signed by Mr. Reed and also signed in the law firm's name. When the law firm dissolved in January of 1973, the case was pending on appeal; Court of Appeals 871A162. At that time there was no agreement as to who was to proceed with the litigation, nor was there any account of moneys in the litigation. Unsuccessful attempts were made concerning these matters in early 1973 by the former partners and Attorney Fred Donnersberger; who was employed to represent Mr. Kenneth Reed and Mr. Harold Abrahamson in connection with the dis-

solved partnership. Respondent filed a motion for extension of time in which to file an answer brief in the Appellate Court as to who was representing the appellees and therefore, who was entitled to the transcript. Respondent's authority was not challenged by the appellant's attorneys. Various affidavits were filed in the Appellate Court concerning the representation of appellees. The Appellate Court decided this question against the Respondent. The appellees in the lawsuit never specifically authorized Respondent to represent them on appeal. Because time was of the essence, it was Respondent's position he must make every effort to perfect the appeal; he did not wish any clients to suffer because of the partnership disputes. After the Court of appeals decision, Respondent made no further attempts to represent appellees.

The Hearing Officer finds for Respondent on Counts I and II. There was no intentional violation of DR1-102A (1), (4), (5) and (6).

Count III concerns disclosures of "confidences and secrets" of one Richard Klaas. These were supposedly disclosed in Respondent's motion filed before the Court of Appeals. Although the evidence is conflicting, the greater weight of it shows that Respondent received no confidential information from Richard Klaas. Respondent did, in fact, believe the motion which he filed in the Appellate Court. He was attempting to disclose an alleged fraud as a judicial officer. This Count is closely connected with the



partnership termination.

The Hearing Officer finds for Respondent; there is no intentional violation of DR1-102A.

COUNT IV A:

Prior to the termination of the law firm, a Probate estate was opened for Robert C. Croner by Kenneth Reed. When the firm dissolved, there was a dispute concerning this estate. These disputes have not been resolved by the Probate Court; nor have they been resolved in a lawsuit concerning the dissolution of the partnership. The Administratrix did make a demand upon Respondent for the Croner estate file. Respondent refused this demand until there was an accounting by his former partners. The Administratrix did not demand any particular papers in the file.

The Administratrix was not entitled to the entire file; she does not own it. Respondent's conduct did not violate DR1-102A (1), (5) and (6), nor DR9-102B (3) and (4). This dispute should be decided by the Court which has jurisdiction of the estate.

COUNT IV B:

In 1968, a condemnation lawsuit was filed entitled State of Indiana -vs- Abe Kushner, et al, 68-PSC-657 in Porter County, Indiana. Respondent's firm represented the landowners; a written agreement concerning the employment was entered into on August 27, 1968. Res-

pondent did the work in this lawsuit and, by agreement with his clients, the firm received $70,000 after the appraisers award was paid into court. The suit was eventually venued to LaPorte Circuit Court. In the spring of 1974, Respondent and his clients had a disagreement after which the clients demanded the firm's files and the prepaid contingent fee of $70,000. Respondent refused this demand. Subsequently, in March of 1975, this dispute came before the LaPorte Circuit Court, which ordered the Respondent to turn over certain papers and make an accounting. The condemnation lawsuit has never been tried and an appeal is pending concerning the LaPorte Circuit Court's turn over and accounting order.

Based on these findings, the Hearing Officer finds that Respondent did not violate DR1-102A (1), (5) and (6); DR2-110B (4); DR2-110A (3), nor DR9-102B (3) and (4). The evidence shows an honest, good faith dispute between respondent and these clients in that particular lawsuit.

COUNT V:

In July of 1975, Respondent filed an action in Lake Superior Court, Room 5, Hammond, Cause No. 573-448. The suit was to set aside a fraudulent judgment. It was a class action against approximately 40 defendants, including one Richard Klaas. Respondent never personally represented Mr. Klaas. This case is presently pending on appeal, Court of Appeals Cause No. 3174A15. The theory



of the lawsuit is fraud, past and continuing.

Respondent believed the allegations of his complaint. The Hearing Officer is unable to ascertain if his belief was reasonable under the circumstances. This question should not be decided here. In filing the lawsuit Respondent did not violate DR1-102A (1), (5) and (6), or DR5-105A.

COUNT VI:

In 1973, Respondent was searching for a Lake County taxpayer to intervene in a lawsuit. On March 14, 1973, he wrote to Mr. Russell Hopper in furtherance of this purpose. A telephone conversation followed and Mr. Hopper declined the invitation. The two were acquaintances. Mr. Hopper may have participated as a taxpayers' representative for Respondent in the past; the evidence is conflicting on this point. Mr. Hopper did not file a complaint with the Disciplinary Commission or testify at this hearing.

Hearing Officer finds that Respondent's conduct did not violate DR1-102A (1) and (6), nor DR2-103A.

COUNT VII:

A physical confrontation occurred between Respondent and Attorney William Spangler on May 6, 1971. Attorneys and clients were meeting for the purpose of settling some lengthy litigation; this did not take place in court. After some yelling, Respondent took a swing at Mr.

Spangler; no blow struck home. Respondent did not intend to hurt anyone. Charges were not filed resulting from this incident; either criminal, civil or contempt.

Respondent's conduct did not violate DR1-102A (1) and (6).

COUNT VIII:

This involves some uncomplimentary remarks directed by Respondent towards Attorney J. Edward McHie in early 1970. This happened during a deposition. Respondent apologized following the incident and the apology was accepted by Mr. McHie.

Hearing Officer finds that Respondent did not violate DR1-102A (5) and (6).

COUNT IX:

On March 21, 1974, there was a verbal exchange between Respondent and Attorney Richard W. Johnston. This took place in the Lake Superior Court, Room No. 1, Hammond, Indiana, The Honorable Cordell C. Pinkerton presiding. Judge Pinkerton did not testify, nor did the other party present, Attorney Richard W. Johnston. No contempt proceedings resulted from the ncident. There was not a delay or disruption of the court proceedings. Respondent's remarks, which were improper, were reasonably related to the judicial action, in furtherance of his position as an attorney for and on behalf of his clients.



Respondent's conduct did not violate DR1-102A (1), (5) and (6), nor did it violate DR7-106C (6).

COUNT X:

In early 1972, Respondent participated in the taking of a deposition which was often continued and was lengthy. The participants temperament became short near the conclusion. Respondent directed some uncomplimentary remarks towards Attorneys John P. McQuillan and Wilbur J. Glendening. The deposition did, however, proceed in an orderly course to a conclusion. The participants did not file a complaint with the Disciplinary Commission. The circumstances surrounding the incident are not clear.

Respondent's conduct did not violate DR1-102A (5) and (6).

COUNT XI:

Respondent was the attorney for litigants in Lake Circuit Court, Cause No. C71-1384. This was a taxpayers' lawsuit concerning fraud and the case drew much publicity. In June of 1974, Respondent filed a brief in the case and disseminated copies of it to various Judges and attorneys not involved in the lawsuit. The people who received it did not testify, -or make a complaint to the Disciplinary Commission. Local newspapers had previously published other orders about the case. The purpose of Respondent's actions was to gather support for his clients' lawsuit. His conduct

was not prejudicial to the orderly administration of justice, nor did it constitute the making of a prohibited extra judicial statement concerning litigation.

At worst, Respondent exercised poor judgment; he did not violate DR1-102A (1), (5) and (6), or DR7-107G (1), (2) and (5).

COUNT XII:

On July 1, 1974, Respondent wrote a letter to Judge James Moody, Lake Superior Court, Room No. 4. The letter was critical of Judge Moody's handling of a particular case; specifically, a previous order he entered which was sent to the Disciplinary Commission. The Hearing Officer is unable to determine why Judge Moody's order went to the Commission. Respondent's letter went there following the order for the purpose of defending his position; for the same reason, copies went to the news media who had published the order two days after it was executed; someone unknown furnishing it to them. It is evident that the press and public had basically been presented one side of the case shortly before the letter. It is also clear that Respondent, acting for his clients, desired to publish his position. Respondent believed the statements in the letter were true; the reasonableness of such belief is questionable.

Respondent did not violate DR1-102A (1), (5) and (6), nor did he violate DR8-102B.



COUNT XIII:

On August 8, 1974, Respondent wrote to Judge Moody; copies were sent to various other persons. The letter shows the continuing conflict between the two concerning pending litigation. Respondent did not knowingly make false statements in the letter. Again, his intention was to publish his clients' position. Respondent's theory is based on a conspiracy; the evidence supporting this is conflicting. Neither Judge Moody, nor Respondent's adversaries initiated contempt proceedings which would have offered Respondent an opportunity to explain his conduct.

Respondent did not violate DR1-102A (16), nor DR8-102B.

COUNT XIV:

It is alleged that Respondent made improper final oral argument in the case of State of Indiana -vs- John Gallison, N 3013, City Court of Hammond, on May 22, 1973. This was a jury case and concerned blocking a railroad crossing in the City of Hammond. In his argument, Respondent went beyond the scope of the evidence; for this he was admonished by the Court. Respondent and his client did believe the prosecutions against the railroad were politically motivated by the City.

Respondent's conduct did not violate the Disciplinary Rules, specifically DR1-102A (1), (5) and (6), nor DR7-106C (1) and (6).

COUNT XV:

Respondent filed a lawsuit on or about May 3, 1974, entitled Woodmar Realty Company -vs- Samuel C. Ennis and Company, et al, Lake Superior Court, Room No. 5, Cause No. 174-439. The 31 page complaint concerned numerous matters, facets and phases of the Woodmar litigation in Federal and State Courts going back to 1941; this suit is pending at this time. Respondent did, in fact, have authority to file this lawsuit. The contention of the Disciplinary Commission is that the suit was filed for the purpose of annoying and harassing attorneys and party litigants who, in the past, have in one way or another opposed Respondent; the evidence was not sufficient to support their contention. A suit was filed in Federal Court to enjoin the prosecution of the 1974 lawsuit; however, the suit to enjoin it was dismissed and an appeal is pending in the Court of Appeals for the Seventh Circuit. These tribunals have before them the parties in interest with jurisdiction to make necessary determinations.

Respondent's conduct in filing said lawsuit did not violate DR1-102A (1), (5) and (6), nor did it violate DR7-102A (1).

COUNT XVI and XVII:

Respondent was an attorney in DuBios -vs- Union Trust Company of Indianapolis as Trustee, et al, Cause No. 197-60. After pending for 17 years, the case was set for trial on October 12, 1973. On



that date, Respondent filed a motion for substituting certain parties and requested a continuance; both requests were granted by the Honorable Everett West. Judge West and Attorney Fred Donnersberger were not pleased with Respondent's motion. After granting the motion, Judge West imposed sanctions on Respondent; heated argument and accusations followed his decision. Both Respondent and Attorney Donnersberger lost their tempers. No contempt proceedings were initiated against Respondent.

Respondent's actions were not prejudicial to the administration of justice; nor did they cause unnecessary delay in the prosecution of the case. Respondent's conduct did not violate DR1-102A (1), (5) and (6), or DR7-102A (1), or DR7-106C (6).

COUNT XVIII:

The lawfirm of Crumpacker, Abrahamson and Reed received a $7,500 loan from the Mercantile National Bank of Hammond on March 6, 1970. This transaction was initiated by Respondent and was later renewed by other members of the law firm. The loan was for the purposes of out-of-pocket expenses connected with pending litigation which is still pending. After the law firm dissolved, Respondent personally paid the renewal note; this loan is still the subject of a partnership dispute. These moneys were not the clients' funds or property, nor were they aware of the transaction.

Respondent's conduct did not violate

DR1-102A (4).

COUNT XIX:

In 1971 the law firm represented Morris Victor in Victor -vs- Sylvester, et al, Porter Superior Court Cause No. 70-PSC-300. Attorney Harold Abrahamson did the work for Mr. Victor. A settlement was reached under which Mr. Victor was to receive $1,750 from each of two defendants. After one defendant paid his share, Mr. Victor consented that distribution be withheld until the firm received the entire settlement. The other half has never been paid by the defendant. Respondent wished to discuss it; however, Mr. Victor refused this request. Respondent does not believe that he owes Mr. Victor; however, clearly somebody owes him. The Hearing Officer cannot decide this partnership dispute.

Respondent did not violate DR1-102A (1) and (6), nor did he violate DR9-102B (4).

In conclusion, the Hearing Officer has found for Owen W. Crumpacker, the Respondent. The evidence clearly shows that he can be a difficult man; one who has pushed and bullied Judges and attorneys for years. Yet, he has done so as an advocate and with honesty. Unfortunately, many times he is unreasonable and hasty. Surely all professions must deal with difficult personalities. If they are honest and capable, there should be a place in the profession for them.



Respectfully submitted,

/s/ Bruce W. Douglas
Bruce W. Douglas, Hearing Officer

IN THE

SUPREME COURT OF INDIANA

FILED
NOV. 29, 1978

IN THE MATTER OF )
) Cause No. 974 S 187
OWEN W. CRUMPACKER )

---

DISCIPLINARY ACTION

---

PER CURIAM

This proceeding is before the Court on a nineteen count amended complaint filed by the Disciplinary Commission of the Indiana Supreme Court pursuant to Admission and Discipline Rule 23, Section 12. A Hearing Officer was appointed, the cause was heard, and the Hearing Officer has filed his findings of fact, conclusions of law and his recommendation. The Disciplinary Commission and the complainant have now petitioned, pursuant to Admission and Discipline Rule 23, Section 15(a), for this Court to review the findings of the Hearing Officer and the Respondent has submitted objections and supplemental objections to the petition for review. Both the Disciplinary Commission and the Respondent have filed briefs in this cause.



In the course of extensive proceedings which have already transpired in the cause and in their respective pleadings before this Court, the Disciplinary Commission and the Respondent have raised several issues which affect this cause in general. These general issues will be addressed prior to reviewing the allegations of misconduct and the evidence of record in support of such allegations.

In his objections and brief in support of such objections, the respondent incorporates by reference three defenses to the allegations of misconduct raised during the hearing stage of this cause. As his first affirmative defense, Respondent asserts that Admission and Discipline Rule 23 is unconstitutional in that it violates the 1st and 14th Amendments to the United States Constitution and Article 1, Sections 13 and 21 of the Indiana Constitution. At no point in these proceedings, however, does the Respondent set out the specifics of this objection. Instead, the Respondent merely makes the general objection and then in the course of his pleadings attempts to attach such objection to specific assertions of misconduct. At a

later point in this opinion this Court will address the specific objections directed toward the charges. Thus, this Court now finds that the Respondent's first affirmative defense, as it stands without specificity, does not present an issue for determination by this Court.

As his second affirmative defense, the Respondent asserts that all the counts of the verified complaint filed in this cause are and constitute the subject matter of pending litigation, the exclusive jurisdiction of which is vested in particular courts of the State.

The fact that the alleged violations of disciplinary rules involve conduct during the course of litigation is no defense. Issues of civil or criminal litigation are not determined in a disciplinary proceeding. Under the Constitution of the State of Indiana, this Court must establish and police standards of professional behavior by the bar. The standard for an attorney's behavior is the Code of Professional Responsibility and such standard exists independent of issues in civil or criminal litigation out of which an allegation of impropriety may develop.



In re Wireman, (1977) __ Ind. __, 367 N.E. 2d 1368, cert. denied 56 L.Ed. 2d 402. Accordingly, in light of the above considerations, this Court now finds that the Respondent's second affirmative defense is unfounded.

The Respondent, as his third affirmative defense, asserts that a former Disciplinary Commission member had a personal, financial interest in the disbarment of the Respondent; and the Commission, acting through this former member and agents "conspired and confederated with other Lake County attorneys for the accomplishment of a corrupt, illegal and unconscionable plan, purpose and scheme," such plan being the removal of the Respondent as an opponent in certain litigation. In Volume II of his brief in support of his objections, the Respondent attempts to weave thirty years of litigation in which he has been involved, including these proceedings, into one grand master plan of conspiracy involving judges, courts and attorneys. The whole world is a fraud, everyone is driven by corrupt motives, and the only exception to this evil design is the Respondent, Owen W. Crumpacker.

Consequently, the Respondent concludes that the whole world is now out to destroy Owen W. Crumpacker.

After examining all matters which have been submitted in this cause, including the transcript of the proceedings before the Hearing Officer, this Court now finds that the Respondent has totally failed in his proof in support of his third defense. The Respondent makes allegations and in the course of questioning witnesses attempts to tie his assertions to events. However, he never accomplishes his purpose; the factual allegations raised in this defense just are not supported by credible, admissible evidence. Accordingly, this Court now finds that the Respondent's third affirmative defense is without merit.

Additionally, the Respondent, in the pleadings filed in this cause, raises various objections to this disciplinary proceeding and the various counts contained in the verified complaint. The Respondent asserts that many of the charges were predicated on allegations not contained in a grievance filed pursuant to Admission and Discipline Rule 23 and as such were neither appropriately investigated nor considered by the Disciplinary Commission.

This Court has held that a disciplinary grievance



will not be strictly construed. Such grievance must merely advise the Respondent of the general nature of the allegations of misconduct made against him. In re Wireman, Supra, In re Murray, (1977) __ Ind. __, 362 N.E. 2d 128, appeal dismissed, __ U.S. __, 98 S. Ct. 758, 54 L. Ed. 2d 777 (1978). In the present case, there were three separate complaints filed and the Respondent specifically waived notice at the administrative level as to several of the allegations of misconduct. We find that the Respondent was advised at the administrative level of these proceedings of the general nature of the allegations upon which the charges in the complaint are predicated.

The Respondent also argues that the events which transpired prior to the adoption of the Code of Professional Responsibility cannot constitute a basis for a disciplinary proceeding. The Respondent, however, does not further develop this issue. This Court, prior to the adoption of the present disciplinary rules, did impose discipline, and the standards for such conduct were the Cannons of Professional Ethics of the American Bar Association. In re Kuzman, (1975) __ Ind. __, 335

N. E. 2d 210, Tokash v. State, (1953) 232 Ind. 668, 115 N.E. 2d 745. Accordingly, where it is properly charged, this Court will examine events which allegedly transpired prior to the effective date of the Code.

Next, the Respondent objects to various charges in the verified complaint arguing that these matters allege criminal misconduct which should afford him the protection of a criminal defendant; he further asserts that the death of a witness has denied him his rights of confrontation and the accusations which center on direct or indirect contempt really are matters to be resolved through civil or criminal proceedings.

These objections merely parallel Respondent's second affirmative defense which was previously noted and determined to be unfounded. We again note that a disciplinary proceeding stands independent of any criminal or civil proceeding. A disciplinary proceeding cannot alter a valid judgment and the fact that a civil or criminal cause was or was not commenced against the Respondent has no bearing on the propriety of a particular disciplinary proceeding relating to similar factual matters. Accordingly, we find that Repondent's objections as set out above are without merit.



The remaining portion of the petitions for review filed by the Disciplinary Commission and the complainant, and the objections and supplemental objections filed by the Respondent concern the substantiation of alleged acts of misconduct and the factual and legal conclusions to be drawn from the factual findings. These issues are resolved through the review process employed by this Court in disciplinary matters. Ultimate findings of fact upon which a determination of misconduct is weighed are reached through a complete examination of all pleadings, including the transcript. The findings of the Hearing Officer are considered; however, they are not controlling on this Court. In re Wireman, Supra, In re Murray, Supra, In re Pawlowski, (1959) 240 Ind. 412, 165 N.E. 2d 595.

In the present case, the Respondent, through the customary courtesies extended attorneys of record, obtained the exhibits considered during the hearing stage of this cause. Ostensibly, such exhibits were obtained to allow the Respondent an opportunity to prepare his response to the petitions for reivew submitted by the Disciplinary Commission and the complainant.

Although stating that he would do so and although being requested to do so on several occasions, the Respondent has failed to return the exhibits placed in his custody and care. The Disciplinary Commission, in their brief, has summarized the relevant exhibits and the Respondent has not specifically objected to such summaries. Accordingly, this Court has employed the summaries submitted by the Disciplinary Commission and taken judicial notice of the records of this Court in its review of the Hearing Officer's findings of fact.

Counts I, II, III, V, VI, XI, XII, and XIII are all interrelated and generally deal with the Respondent's litigious assault on former members of his law firm, former clients, and others perceived by the Respondent to be associated with his former partners. It is noted at the outset that many of these charges involve conduct which occurred during the course of litigation. The Code of Professional Responsibility does not restrict advocacy and this Court does not suggest in any way that a lawyer should not provide zealous representation. Yet, a legal proceeding is not a vehicle for personal vilification and when a lawyer's decisions, pleadings, and practice develop into tools for self-



interest, he ceases to be a zealous advocate. The lawyer at this stage becomes an impediment to the practice of law and violates the Code of Professional Responsibility.

The first two counts emanate from the Respondent's alleged conduct during the appeal of a cause from Lake County, captioned Dedelow Inc. et al. v. Board of County Commissioners et al. In general the Respondent is charged with improperly asserting that he represented the appellees and improperly submitting a scurrilous pleading. Specifically, the Respondent is charged under both counts with violating a disciplinary rule, with engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, with engaging in conduct prejudicial to the administration of justice, and with engaging in conduct that reflects adversely on his fitness to practice law, in violation of Disciplinary Rules 1-102(A)(1), (4), (5), and (6).

After reviewing all matters submitted in this cause the Court now finds that in the spring of 1972 the Respondent was a partner in the firm of Crumpacker, Abrahamson and Reed. In May 1972, Abrahamson and Reed announced their intent to leave the firm. By the end of 1972, the plans were finalized by Abrahamson and Reed and there

was no question as to the fact that they were leaving. The Respondent left for a vacation in Colorado and locked his files in his office. As a condition to getting office files, the Respondent demanded that the clients of Reed come into the office and discuss, with the Respondent, Reed's representation in the future. The Respondent also demanded possession of Reed's personal bank accounts for scrutiny.

The Dedelow case was an action brought by Dedelow Inc. as the unsuccessful low bidder on a county project seeking injunctive relief plus damages. The case was filed in 1971 by Kenneth Reed. He signed the pleadings in the firm name and in his own name. The Respondent never participated in the law suit. The trial court found for plaintiffs, imposed injunctive relief, but did not award damages. Defendants appealed.

The defendants filed their brief on December 31, 1972. Plaintiffs below (Dedelow) had forty days to respond which came about during a period of time in which the Respondent's firm was dissolving. Peter Vukovich, house counsel and secretary for Dedelow, Inc., gave the Respondent a check covering costs due and requested that the Dedelow files be turned over. He never received



what he requested. James Dedelow, Vice-President of Dedelow, Inc.,thought that he employed Reed and not the Crumpacker firm.

On January 29, 1973, the Respondent filed a verified petition for extension of time to file the brief for Dedelow and was given the record of proceedings. (The Respondent has asserted that he had authority to file the petition by reason of the fact that he was the senior partner in the law firm at the time the initial complaint was filed.) Thereafter, Reed filed for time and requested possession of the record. The Court of Appeals set a hearing on March 5, 1973,to determine who represented Appellee Dedelow.

Reed and Abrahamson employed counsel, Fred G. Donnersberger, to represent them concerning the dissolution with the Respondent. Prior to the Court of Appeals hearing, the Respondent prevailed on Donnersberger to get such hearing called off. When Donnersberger informed the Respondent that it would be held as scheduled, the Respondent retorted, "You snake son-of-a-bitch, that leaves but one thing for me to do, to go down and load up both barrels of my gun, and I'll getcha."

The Court of Appeals held the hearing and gave both parties claiming to represent appellee until March 12,

1973 to file papers on the issue of representation. At the March 5th hearing Donnersberger tendered the Court a copy of a resolution of Dedelow, Inc. showing that the Board of Directors unanimously voted to have Reed represent them in the litigation then pending before the Court of Appeals.

On March 11th the Respondent filed in the Court of Appeals a motion entitled "Motion of Defendant-Appellee (sic) James R. Dedelow for Review of Records for Fraud Practiced upon the Courts and the Taxpayers of Lake County, Indiana." (This Court has taken judicial notice of such motion.) This pleading alleged that Reed had conspired with the county attorney to produce the "de facto" defeat of his clients in this matter in exchange for the defeat of the county in other litigation, commonly known as the "Apple Valley Park" litigation. James Dedelow then filed a pro se pleading noting that he did not authorize the filing of the above-noted motion and prayed that it be withdrawn and expunged. The Court of Appeals granted the relief as prayed by James Dedelow.

In light of the above findings of fact this Court now concludes that the Respondent misrepresented to



the Court of Appeals his status in the Dedelow proceedings and used such proceedings as a forum to personally attack a former partner. Accordingly, this Court now finds that the Respondent has violated the Disciplinary Rules, engaged in conduct involving dishonesty, deceit and misrepresentation, engaged in conduct prejudicial to the administration of justice and engaged in conduct which adversely reflects on his fitness to practice law. By such conduct the Respondent has violated the Code of Professional Responsibility as charged under Counts I and II of the amended verified complaint.

Counts III and V are related to Counts I and II and grow out of the Respondent's relationship with one Richard L. Klaas who was a client of the firm of Crumpacker, Abrahamson & Reed prior to the dissolution of this firm in January, 1973. Under Count III, the Respondent is charged with using confidential information concerning Mr. Klaas in filing his "Motion of Defendant-Appellee (sic) James R. Dedelow for Review of Records for Fraud, etc.," on March 11, 1973, in the Court of Appeals. Specifically, under Count III, the Respondent is charged with revealing

confidences or secrets, using confidences or secrets for the advantage of himself or a third party, violating a disciplinary rule and engaging in conduct which adversely reflects on his fitness to practice law in violation of Disciplinary Rules 4-101(B)(1), 4-101 (B)(2), 1-101 (A)(1), and 1-101 (A)(6) of the Code of Professional Responsibility.

Under Count V of the complaint, the Respondent is charged with naming Klaas as one of 42 defendants in a lawsuit involving the same general subject matter as involved in prior litigation where Klaas was represented by the Crumpacker firm. The Respondent is charged with the same violations of the Code as noted above under Count III, plus improperly using a confidence or secret to the disadvantage of a client which violates Disciplinary Rule 4-101 (B)(2).

After examining the matters which have been submitted in this cause, we now find that Richard L. Klaas became interested in developing a mobile home park but ran into difficulty when the County Commissioners denied a petition to have property rezoned. He went to Crumpacker, Abrahamson & Reed in June 1971;



he initially requested Mr. Crumpacker, but was referred to Mr. Reed. Since the vote of the Commissioners was 2-0, Reed proceeded to file a declaratory judgment action in Lake Superior Court Room 5. This action was decided in August 1971 and eventually Klaas received a favorable ruling concerning the rezoning.

The land in question was held in trust by Lake County Trust Company. After Klaas had plans approved by the Planning Commission, Saul Ruman, on behalf of certain affected property owners, brought a suit against Klaas and another suit against the Board of Commissioners in Lake Circuit Court. Klaas was represented by the Respondent's law firm in all of this litigation and paid the firm approximately $7,000. This money was deposited in the firm account. During the course of this litigation Klaas talked over his legal problems with Reed and Crumpacker and provided numerous documents and other materials necessary for the proceedings.

On March 11, 1973, the Respondent filed his motion in the Court of Appeals in the Dedelow case asserting fraud on behalf of Reed and Klaas. At this time two appeals were pending in the litigation brought by Ruman for the remonstrators. The Respondent asserted

that Reed entered a deal with the attorneys representing the Lake County officials in this cause. Under the alleged terms of such arrangement, Reed was allowed to enter a false entry of judgment in the Apple Valley litigation in exchange for losing the Dedelow litigation. In his motion the Respondent sets out the proposed rent schedules for the trailer park property and some of the details of a compromise agreement being considered by Klaas and the remonstrators. Klaas did not authorize the disclosure of this information.

As noted under Counts I & II, the Court of Appeals ordered the Respondent's fraud motion expunged and stricken. Thereafter, on July 26, 1973, the Respondent, on behalf of Martin J. Connelly and Dorothy Connelly, et al., filed a suit in Lake Superior Court against 42 defendants, including Klaas and Reed, charging that Defendants perpetrated a fraud on the taxpayers of Lake County. Judge Kaul, on September 25, 1973, enjoined the Connellys and others with notice from prosecuting this cause in that it sought to set aside a settlement of a class action in Lake Circuit Court. On june 24, 1974, Judge Moody ordered the Respondent's appearance stricken in that the Respondent had



previously represented Klaas and now was representing parties with adverse interests in litigation involving the same subject matter.

In view of the above findings of fact, this Court now concludes that Klaas employed the Respondent's law firm in numerous matters, paid the firm $7,000 and was represented by the firm until its dissolution in 1973. It is also our conclusion that the Respondent charged his former client with misconduct in the same lawsuits his firm participated in prior to dissolution of the firm, that the Respondent filed a lawsuit against a former client concerning matters identical to those involved in his former firm's representation, and that the Respondent used documents furnished by Klaas upon which to predicate his allegations of fraud. Accordingly, this Court now further finds that the Respondent revealed confidences, used confidential information for his personal advantage, violated a disciplinary rule, engaged in conduct which adversely reflected on his fitness to practice law, and, by filing a lawsuit against Klaas, attempted to use confidences to the disadvantage of a former client in violation of the Code of Professional Responsibility as charged under

Counts III and V of the amended verified complaint.

In Count VI of the amended complaint the Respondent is charged with attempting to solicit a potential client, Russell C. Hooper. This alleged conduct is prohibited by Disciplinary Rule 2-103(A). The Respondent is further charged under this Count with violating a disciplinary rule (1-102(A)(1)) and engaging in conduct which adversely reflects on his fitness to practice law (1-102(A)(6)).

After review of the pleading filed in this cause, this Court now finds that on March 14, 1973, Crumpacker wrote Russell C. Hooper and stated that there was a need for someone to step in for Dedelow and combat the fraud that was being perpetrated on the taxpayers of Lake County. In response, Hooper wrote the Respondent and indicated that he knew nothing of this matter. Hooper declined to participate in this litigation. It appears that this second letter was written in Reed and Abrahamson's office, but signed by Hooper.

These findings of fact establish that the Respondent attempted to solicit legal business. This conduct violated Disciplinary Rules 2-103(A), 1-102(A)(1), and 1-102(A)(6) as charged under Count VI of the



amended complaint.

Counts XI, XII, and XIII of the amendeod complaint involve the Respondent's conduct during the Klaas litigation noted above under Counts III and V. In Count XI the Respondent is charged with publicly disseminating a pleading containing improper extrajudicial matters. He is specifically charged under the Code of Professional Responsibility with violating the following Disciplinary Rules:

> 1-102 (A)(1) - Violating a Disciplinary Rule;
> 1-102 (A)(5) - Engaging in conduct prejudicial to the administration of justice;
> 1-102 (A)(6) - Engaging in conduct which reflects adversely on his fitness to practice law;
> 7-107 (G)(1) - Making an extrajudicial statement in a pending civil case relating to evidence regarding the occurrence or transaction involved;
> 7-107 (G)(2) - Making an improper extrajudicial statement concerning the character, credibility or criminal record of a party, witness or prospective witness;
> 7-107 (G)(4) - Making an improper extrajudicial statement regarding his opinion as to the merits of claims by a party; and
> 7-107 (G) (5) - Making an improper extrajudicial statement relating to a matter reasonably likely to interfere with a fair trial of the action.

We have examined all matters submitted in this cause and now find that during the Klaas litigation a motion was filed to strike the Respondent's appearance. On June 10, 1974, Respondent filed a one hundred page brief in support of his objections directed toward the

Motion to Strike and sent a copy of such brief to over 80 attorneys and judges not associated with the Klaas case. The following matters, which are indicative of the contents of the brief, have been taken from its table of contents:

III. STATEMENT OF THE FACTS.....11-31

A. Description of the Actual Owners and Promoters of Apple Valley Village, To-Wit: Dannie's Mobile Homes, Inc. And Its Individual Officers and Directors.....11-15

B. The Connellys, The 2700 Demonstrators, and The Citizens, Voters and Taxpayers of Lake County, Indiana, Won a Victory Before the Board of County Commissioners On the Evening Of May 10, 1971. The Board of County Commissioners Voted Against the Rezoning of the Dinwiddie Farm (Apple Valley Village).....15-16

C. Hammond Attorney Kenneth D. Reed, County Attorney Joseph L. Skozen and Assistant County Attorney William J. Muha Perpetrate a Vicious Fraud On The Lake Superior Court Room No. 5, The Connellys, the 2700 Remonstrators, And The Citizens, Voters and Taxpayers of Lake County in Procuring A Collusive Decree on August 6, 1971. Purporting to Rezone Apple Valley Village in Circumvention of The May 10, 1971 Decision Of The Board of County Commissioners.....16-21

D. The Connellys, 2700 Remonstrators and the Citizens, Taxpayers and Voters



Are Surprised to Learn That The Hammond Superior Court, Room No. 5, In Cause No. 571-418 Has "Rezoned" The Dinwiddie Farm by Declaratory Judgment. They Make a Further Effort to Get Relief--This Time Through Resort To The Courts.....21-23

E. Flushed With Two Quick Knock-Out Victories Over Ruman and Hungry for Cash, Reed and Muha Make A Five Million ($5,000,000) Boner In Urging Dannie's Mobile Homes, Inc. to Proceed, Full Steam Ahead, With the Building Program. They Know That They Can Win Before Judge Pivarnik In The Third Suit. They Discount And Ignore The Potential Round House Punch of Robert Berger, Ruman's Law Man, In Appeal Work. They Make The "Drop" For Klaas And The Secret Beneficiaries of Trust No, 1653....23-26

F. Much To The Further Suprise of Reed, Skozen, Muha, Klaas, The Secret Beneficiaries of Trust No. 1653 and Dannie's Mobile Homes, Inc., Et Al., Saul I. Ruman and Robert Berger, His Law Man, Win A Smashing Victory for the 2700 Remonstrators, Citizens, Taxpayers And Voters, In The Indiana Court of Appeals On June 29, 1972. The Sell-Out Price for Saul I. Ruman and Class Plainiffs Bryant, Jr., Paul Hoffman and Martin Hoffman (Under Negotiation Since November 2, 1971) Sky-Rocketed Accordingly.....26-29

G. Ruman, Reed, Skozen and Muha Make a Unique Deal. In Selling Out the Interests Of The 2700 Remonstrators, Citizens, Taxpayers and Voters, And To Exculpate Themselves From Blame In Quadrupling The Size Of The Con-

templated Mobile Home Park, They Work Out A Scheme To Take The Indiana Court of Appeals And The Lake Circuit Court At Crown Point The "Scapegoats" for the Project.....30-31

IV. UNPRECEDENTED SCHEME TO USE INDIANA COURTS AS A WEAPON TO DESTROY RIGHTS AND INTERESTS OF THE 2700 REMONSTRATORS, AND THE CITIZENS, VOTERS AND TAXPAYERS OF LAKE COUNTY.....31-37

V. TO BRING THE PLAN AND SCHEME TO FRUITION, IT WAS MANDATORY THAT SAUL I. RUMAN AND THE THREE CLASS PLAINTIFFS, JOHN BRYANT, JR., PAUL HOFFMAN AND MARTIN HOFFMAN, VIOLATE THEIR FIDUCIARY DUTIES AS TRUSTEES (CLASS PLAINTIFFS).....37-45

VI. BY MAKING AN UNCONSCIONABLE DEAL WITH KENNETH D. REED, COUNTY ATTORNEY JOSEPH L. SKOZEN AND ASSISTANT COUNTY ATTORNEY WILLIAM J. MUHA TO UPHOLD AND PROTECT THE COLLUSIVE "DECLARATORY JUDGMENT, " PURPORTING TO REZONE APPLE VALLEY VILLAGE , SAUL I. RUMAN AND THE CLASS PLAINTIFFS, JOHN BRYANT, JR., PAUL HOFFMAN AND MARTIN HOFFMAN, BECAME PARTIES TO THE PLAN, SCHEME AND CONSPIRACY JUST AS THOUGH THEY WERE PRINCIPALS IN THE BEGINNING.....46-49

VII. SAUL I. RUMAN JOINS WITH KENNETH D. REED, HAROLD ABRAHAMSON AND ASSISTANT COUNTY ATTORNEY WILLIAM J. MUHA IN "COVER-UP"ACTIVITIES IN THE LAKE CIRCUIT COURT WITH THE PURPOSE OF BRINGING ABOUT A DISMISSAL OF THE CONNELLYS' ACTION IN THE LAKE SUPERIOR COURT IN HAMMOND.....49-54

VIII. SAUL I. RUMAN'S "MOTION TO STRIKE OWEN W. CRUMPACKER'S APPEARANCE ON BEHALF



OF CONFLICTING PARTIES, TO STRIKE CERTAIN LETTERS AS FALSE AND IMPROPER AND TO FIND OWEN W. CRUMPACKER IN CONTEMPT OF COURT" IS SIMPLY ONE FURTHER OVERT ACT IN THE PLAN, SCHEME AND CONSPIRACY HERETOFORE DESCRIBED. THE CONNELLY'S AMENDED VERIFIED OBJECTIONS TO THE RUMAN MOTION POINT OUT WHY HON. JAMES T. MOODY SHOULD NOT HANDICAP FULL EXPOSURE OF AN UNPRECEDENTED FRAUD ON THE INDIANA COURTS.....54-99

The above findings establish that the statements contained in the brief were extrajudicial and that such extrajudicial matters were intentionally directed by the Respondent to members of the Bench and Bar, who had no relationship to the pending litigation.

It appears that Respondent's intent was to have such matter communicated generally among the Bench and Bar. Sending such a document, to over 80 individuals reasonsbly suggests an intent for public dissemination and we conclude that these extrajudicial statements were made in such a manner that a reasonable person would expect them to be disseminated by means of public communication.

Accordingly, this Court holds that Respondent made extrajudicial statements in a pending civil case concerning evidence regarding the occurrence or transaction involved, the character or credibility of

parties, witnesses and prospective witnesses, his opinion as to the merits of claims and concerning matters reasonably likely to interfere with a fair trial. In so doing Respondent violated the Disciplinary Rules 7-107(G)(1), (2), (4), and (5), 1-102(A)(1), (5), and (6).

In the Klaas litigation, as noted before, Judge Moody struck Respondent's appearance by reason of a conflict of interest. The Respondent thereafter wrote two letters excoriating Judge Moody. His letter of July 1, 1974, to Judge Moody forms the basis of Count XII; the one of August 8, 1974, to Richard Grabham, Co-nt XIII. Both letters were released to the press. Together with the general charges of misconduct under Disciplinary Rule 1-102(1) and (6), the Respondent is specifically charged with violating Disciplinary Rule 8-102(B)which provides:

> "A lawyer shall not knowingly make false accusations against a judge or other adjudicating officer."

After reviewing all matt ers submitted herein, we now find that on June 24, 1974, Judge Moody, as Special Judge in the Klaas case, entered an order finding that the Respondent was engaged in a conflict



of interest by attempting to represent the Plaintiffs (Connellys) in this litigation; Judge Moody ordered Crumpacker's appearance striken. The judge did not release a copy of his order to the press; however, the press obtained the order and published such findings. On July 1, 1974, Respondent wrote Judge Moody a letter in which the Respondent accused Judge Moody of deliberately covering up gross fraud and publishing the order, among other accusations. Respondent then petitioned for Judge Moody to be joined in the disciplinary proceeding against the Respondent. Judge Moody replied with a 10 page response. The Respondent countered with a 17 page letter to Richard Grabham, then Executive Secretary o-f the Disciplinary Commission, generally suggesting that Judge Moody was engaged in the conspiracy taking place, that he lived under a rock, was somehow associated with the Watergate scandal, was in Reed's vest pocket, and was otherwise a corrupt public official. Respondent made attempts but wholly failed to prove any of the acts of impropriety alleged in his letters. The Respondent furnished copies of his correspondence to the news media in both instances.

In light of the above facts we find that after

receiving an unfavorable ruling from Judge Moody, the Respondent launched an unmitigated assault on Judge Moody's character and integrity. The accusations contained in his letters are totally unreasonable and false. The Resppondent should have known and probably did know such accusations were false. Thus, we conclude that Respondent engaged in the misconduct charged under Counts XII and XIII and violates Disciplinary Rules 8-102(B) and 1-102(1) and (6).

The remaining counts in the amended complaint are not associated with the Dedelow and Klaas litigation. The charges of alleged misconduct under the remaining counts generally relate to the Respondent's course of conduct in various lawsuits, demonstrated manner of representation, and proclivity to use a legal proceeding as a vehicle to punish his enemies.

Count XIV charges Respondent with making improper statements during a closing argument in Hammond City Court. He is alleged to have improperly argued that Special Judge Stanish had a connection with the Police Department and that the prosecution of this case against a railroad was politically motivated. The Respondent is charged with violating the following



provisions of the Code of Professional Responsibility"

D.R. 1-102(A)(1) - Violating a disciplinary rule;
D.R. 1-102(A)(4) - Engaging in conduct involving fraud, deceit, dishonesty or misrepresentation;
D.R. 1-102(A)(5) - Engaging in conduct which is prejudicial to the administration of justice;
D.R. 1-102(A)(6) - Engaging in conduct which reflects adversely on his fitness to practice law;
D.R. 7-106(C)(1) - While appearing before a tribunal, alluding to a matter he has no reasonable basis to believe is relevant or that will not be supported by admissible evidence;
D.R. 7-106(C)(6) - During the Course of a proceeding, intentionally or habitually violating an established rule of procedure or evidence; and
D.R. 8-102(B) - Knowingly making a false accusation against a judge.

This Court has examined all matters presented herein and now finds that during May, 1973, John Stanish sat as Special Judge in State v. Gallison. The Respondent represented the defendant who was charged under a state statute for improperly blocking an intersection; Gallison was a railroad engineer. During his final argument in this case, the Respondent stated that the prosecution was politically motivated; that the arresting officer was under the influence of the prosecutor and Court and had to follow instructions in order to advance within the police department; that he (arresting officer) was taking his orders from the Court, which was a police court; that the

defense was stuck with the Special Judge; and that the judge's law partner's father was a police officer. No evidence was introduced by Respondent to support these allegations.

Special Judge Stanish called a recess and admonished the Respondent, during which the Respondent continued to shout at the Judge.

The above findings establish that Respondent made statements which he had no reason to believe were supported by admissible evidence. He intentionally and habitually violated an established rule of procedure and knowingly made false accusations against a judge. Respondent's conduct is a misrepresentation in a court of law, is prejudicial to the administration of justice, reflects adversely on his fitness to practice law and is violative of the Disciplinary Rules. Accordingly, this Court concludes that Respondent did engage in the misconduct charged under Count XIV of the amended complaint and did violate the Disciplinary Rules charged therein.

We will next review the charges under Count IV(A) and (B). This c ount grows directly out of the dissolution of the firm of Crumpacker, Abrahamson and



Reed. The Respondent is charged with refusing to return files to clients after they had indicated a desire to be represented by his former partners. Specifically, the Respondent is charged with violating a Disciplinary Rule, engaging in conduct prejudicial to the administration of justice, and in engaging in conduct which adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(1), (5) and (6). Additionally, under Count IV the Respondent is charged with violating Disciplinary Rule 9-102(B)(3) and (4) which provide that a lawyer shall maintain complete records of clients' funds, securities and other properties, render appropriate accounts, and promptly pay or deliver to the client, as requested, funds, securities or other properties to which the client is entitled.

After reviewing all matters submitted in this cause, this Court now finds that Kenneth Reed while a member of the firm, was attorney for Robert Croner during Mr. Croner's life. Mr. Croner owned a meat market. When Croner died in September, 1972, Mrs. Croner employed the firm to handle the estate; she gave to Reed tax records, business records, insurance policies, titles and personal checks. When the Crumpacker firm

dissolved in 1973, Reed did not take the Croner file with him.

In April, 1973, in order to prepare tax returns, Mrs. Croner and her accountant attempted to get the records which had remained under Respondent's control in the firm's premises. They made an appointment with the Respondent, waited one hour, but he did not appear. She returned the next day with her son and again the Respondent did not show. During the summer of 1973, Mr. Lloyd Ahlf contacted the Respondent on three different occasions attempting to get the Croner file for Mrs. Croner.

In January 1974, Mrs. Croner and her son met with the Respondent. Mrs. Croner advised the Respondent that she came to pick up her records. Respondent instructed her to be quiet and listen to him. When she advised him that she came for a purpose, the Respondent told her and her son to "Get the hell out." The Respondent then had his secretary bring in the records and tried to tell Mrs. Croner that he would like to settle the estate. Respondent pulled several matters out and started reading them. Mrs. Croner told the



respondent that she wanted Reed to represent her. Finally, the Respondent instructed Mrs. Croner and her son to leave. He walked them to the elevator and was reported to have said, "You can get the hell out of here. Stay out of here. You will never get your records."

Thereafter, Mrs. Croner's accountant had correspondence with the Respondent in an attempt to get the records. The Respondent has never turned the records over to Mrs. Croner.

During the hearing of this cause the Respondent testified that he never had Mrs. Croner's file. He had the office file, but not her file. He did not give her the file because he felt she did not have the proper attitude and because he believed there may have been an unreported gift of certificates of deposit, given in contemplation of death. The Respondent added that this may have created liability on his part and he had an obligation to see that the taxes were properly reported. His proof of this allegation was extremely weak and speculative.

As a consequence of not having the business

and personal records, the personal files of Mr. Croner had to be reconstructed. The time involved in obtaining duplicate documents cost the estate penalties and interest in the amount of $1,275.

The Respondent's testimony is specious, at best, and in great part inconsistent. He testified that he did not have Mrs. Croner's file, but he did have an office file. He said he did not have any personal record, but then states that he refused to turn over the file because he noted certain unreported transfers of certificates of deposit.

On the other hand, the testimony of the Disciplinary Commission's witnesses was consistent and there appears to be no motivation for prevarication on their part.

In light of the findings and considerations set out above, we conclude that the Respondent acted in a manner which was prejudicial to the administration of justice and which reflected adversely on his fitness to practice law. This constitutes a violation of Disciplinary Rules 1-102(A)(1), (5), and (6).

We further conclude that the findings establish that the Respondent did not provide an adequate account



of the properties in his control nor deliver such records as requested. This conduct is violative of Disciplinary Rules 9-102(B)(3) and (4).

As to Count IV(B), this Court now finds that Kushner and Gersack were property owners involved in a condemnation proceeding. In 1968 they retained the Crumpacker firm to represent them in such litigation. Thereafter, the State paid in $312,435 and the plaintiffs on petition withdrew this amount pending the resolution of the condemnation litigation. Under the contingent fee agreement drafted by Reed, the firm was to receive 29% of the recovery. When the money was withdrawn, the Crumpacker firm was given $70,000. The money was deposited in the firm's account and eventually distributed. Additionally, the clients had paid $6,000 to $7,000 for court costs. The Respondent personally agreet to hold the clients harmless for any loss on the withdrawal bond posted. In 1973, Kushner made ten to twelve attempts to contact the respondent relative to the delay in this litigation. In the spring of 1974, Kushner, Gersack and Respondent finally had a meeting. The clients asked for an accounting; they were not satisfied as to what they received. Thereafter, they informed Respondent

in writing that they wanted their file returned as well as their money. The Respondent did not return the file or money. Instead, the Respondent filed a petition for leave to withdraw his appearance in the condemnation proceeding which had been venued to the LaPorte Circuit Court. In March 1975, the LaPorte Circuit Court granted his petition to withdraw and ordered him to return all files, papers, and unearned fees. The Resppondent failed to do soand was found in contempt.

The findings set out above clearly establish that the clients were entitled to their file when they made their written demand. Respondent's refusal to do so constitutes misconduct and is violative of Disciplinary Rule 9-102(B)(3) and (4). Such conduct is prejudicial to the administration of justice and adversely reflects on Respondent's fitness to practice law, in violation of Disciplinary Rule 1-102(A)(1), (5) and (6).

Counts VII, VIII, IX and X concern the Respondent's outbursts during proceedings.

Under Count VII of the amended complaint the Respondent is charged with verbally and physically assaulting attorney William Spangler on or about May 6, 1971, in the library and foyer of the Lake Superior



Court in Hammond.

Having reviewed all matters submitted in this cause, this Court now finds that on May 5, 1971, Spangler met with the Respondent in a settlement conference in the Hammond Courthouse. Also attending this conference were Jack and Helen Herschbach and attorneys G. Edward McHie and Edward Glendening. The case in question involved Herschbach trust funds.

During the courseof the conference Respondent became involved in a confrontation. The commotion was initiated by Respondent who grabbed Spangler when he was attempting to leave. These findings demonstrate conduct which reflects adversely on Respondent's fitness to practice law and is thusly violative of Disciplinary Rule 1-102(A)(1) and (6) as charged in the complaint.

Under Count VIII the Respondent is charged with calling Attorney Edward McHie, among other things, a "little yellow son-of-a-bitch" during the course of the taking of a deposition. Specifically, the Respondent is charged with violating a Disciplinary Rule (1-102(A)(1)), engaging in conduct prejudicial to

the administration of justice (1-102(A)(5)), engaging in conduct which reflects adversely on his fitness to practice law (1-102(A)(6)), and engaging in undignified or discourteous conduct degrading to a tribunal (7-106(C)(6)).

This Court has examined all matters presented herein and now finds that during the course of the taking of Mr. Edward Schaeffer's deposition in 1970, the Respondent called opposing counsel, McHie, on the record dense, a culprit, so lacking in mental capacity as not being able to find his way to the toilet, too big for his britches, a skunk, a jack-leg, lazy, tricky, unfit to practice law, and a little yellow son-of-bitch. Respondent apologized to McHie on the next day. In November 1974, Respondent wrote McHie and amended his remarks to substitute "ring-tail" for "little yellow."

Had the conduct of Respondent been committed after the effective date of the Code of Professional Responsibility, the evidence presented in this cause would be sufficient to support a finding of misconduct as charged under Count VIII of the amended complaint. This Court, however, has found that the incident in



question took place prior to March 8, 1971, the effective date of the Code. Since the amended complaint did not charge the Respondent with misconduct under predecessor provisions, we now find for the Respondent under Count VIII.

In Count IX the Respondent is charged with directing discourteous and derogatory remarks toward opposing counsel and the Plaintiff during the course of a hearing before Judge Pinkerton. As under Count VIII, the Respondent is charged with violating Disciplinary Rules 1-102(A)(1), (5), and (6) and 7-106(C)(6).

This Court following review of all matters submitted in this cause now finds that on March 24, 1974, before Judge Pinkerton, during a hearing on a protective order, the Respondent directed the following remarks and others toward opposing counsel, Johnson, and/or the Plaintiff, Winslow Van Horne: (Toward Johnson): "Now if your Honor isn't going to cover him up, fine, kiss him off, send him back to the country club, let him get up on a bar stool and continue.'.....'there he could find better people to argue with as your Honor is aware"; (Toward Johnson): ". . . a young man who leaves the bar stool

out of the men's grill . . ."

(Toward Johnson): ". . . this little pipsqueak who couldn't make a living except for NIPSCO"; (Toward Johnson) ". . . he couldn't make a living if Don Mitchell gave him a pocket full of cash."; (Toward Van Horne): ". . . better get back over and sober up"; (Toward Van Horne): "Van Horne, you go back to Auburn and get drunk and get your god damned liver. . ."

These remarks were improper, but more than that these were direct, personal, insulting references directed toward opposing counsel and the Plaintiff, who happened to be an attorney. Standing alone, this one incident probably would not be sufficient to warrant serious discipline. However, this one Count does not stand alone; Respondent's behavior in the case noted under this count appears to be indicative of his method of operation. When reviewing this record, it is evident that in many instances the Respondent browbeats, shouts at and attempts to intimidate his opponents. His tirades are, at times, irrational and his rage appears to be uncontrolled. Ethical consideration 7-37 has application in the present



circumstances:

> EC 7-37 In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

In light of the above considerations, we now conclude that the Respondent violated Disciplinary Rules 7-106(C)(6) and 1-102(A)(1), (5), and (6), as charged under Count IX of the amended complaint.

Count X charges the Respondent with making insulting remarks toward opposing counsel, John Patrick McQuillan, and the witness during the taking of a deposition. Respondent is charged with the same violation of the Code as under Counts VIII and IX, i.e., violation of Disciplinary Rules 7-106 (C)(6) and 1-102(A)(1), (5), and (6).

We now find that the incident involved in this Count was the deposition of Henry Herschbach, an 82 year old man. During such deposition, which lasted eleven days, the Respondent shouted at the witness, pointed his finger in the witness' face and verbally abused the opposing counsel and the witnese. The

Respondent frequently accused opposing counsel of corruption, "hanky-panky", scheming to convert and steal funds and documents, falsification of records, swindling, suborning perjury, compounding a felony, dishonesty and evasive conduct. On the final day, during the course of the deposition and in the presence of the deponent, the deponent's wife, the plaintiff, and others, the Respondent told opposing counsel, John P. McQuillan, on three occasions, that Respondent was going to stick or put McQuillen's head in a "toilet bowl." During the course of the said deposition the Respondent also accused the deponent of dishonesty, lying, corruption, conversion, embezzlement, and other crimes. A number of these accusations were accompanied by Respondent pointing at the eighty-two year old witness, shaking his hands and fingers at the witness and shouting at the witness.

In light of the above findings, this Court now concludes that the Respondent engaged in conduct which adversely reflects on his fitness to practice law and which was prejudicial to the administration of justice. Accordingly, we now further find that the



Respondent violated Disciplinary Rules 1-102 (A)(1), (5), and (6) as charged under Count X of the amended compaint.

Under Count X , as noted above, the Respondent is also charged with violating Disciplinary Rule 7-106 (C)(6), which prohibits undignified and discourteous conduct when appearing in a professional capacity before a tribunal. The Respondent's misconduct under this count transpired during the course of a deposition. The issue thusly becomes whether or not conduct during the course of a deposition is conduct "before a tribunal" under the above-cited Disciplinary Rule. This rule is predicated on the need for an orderly procedure to resolve disputes. Such procedure envisions spirited debate and intense examination. But an orderly process of dispute resolution is not possible unless there is respect for the procedures and an attempt to work within an established framework. Discourteous and undignified behavior detracts from the orderly process of dispute resolution and clearly falls outside an acceptable level of attorney conduct. It appears insignificant whether such conduct

occurs during the taking of a deposition or during the examination of a witness at trial. Both instances require an orderly process and mandate customary courtesies. Both a deposition and a trial are governed by the rules of Court and are under the auspices of the Court. Accordingly, we now find that the Respondent's conduct during the course of the Herschbach deposition violated Disciplinary Rule 7-106 (C)(6), as charged under Count X of the amended complaint.

Under Count XV the Respondent is charged with filing a lawsuit alleging fraud and conspiracy when such assertion had been previously litigated in Federal Court and found to be a groundless claim. It is asserted inthe complaint that the Respondent pursued this course of litigation as a means to annoy and harass the attorneys opposing him. The Respondent is charged with violating the general provisions of Disciplinary Rules 1-102(A)(1), (5), and (6) and Disciplinary Rule 7-102(A)(1) which prohibits deliberately filing a suit for a client when it is obvious that such action would serve merely to harass another.

Having reviewed all matters submitted in this cause, this Court now finds that in May 1974, the



Respondent prepared and filed a complaint in the Superior Court on behalf of Woodmar Realty Company. He was authorized by his client to do so. Named as defendcants, among others, were Walter McLean and Herschel Davis. These individuals were the trustee and trustee's attorney in a bankruptcy proceeding involving Woodmar Realty. Such previous proceeding was commenced in 1941 and concluded in 1969 with the trustees being discharged. Also named as defendants were Edmond Leeney, Charles Levin, and Floyd Murray who had represented interested parties adv erse to the Respondent during the course of the bankruptcy proceeding.

During the course of the proceeding in Federal Court, the Respondent attempted to assert fraud on the part of McLean and Davis. The Respondent filed an amended complaint which was dismissed. On appeal, the United States Court of Appeals, Seventh Circuit, affirmed the decision of the district Court. Woodmar Realty Company v. McLean (1961), 294 F. 2d 785. Additionally, the Court of Appeals commended on the Respondent's conduct in such matter.

. . . This opinion might rest there and the judgment be affirmed without further discussion, were it not for the pervading impression gathered from this record that the removal peeition constitutes an attempt by appellant's attorney, Mr. Crumpacker, to harrass appellees inthe continued performance of their official functions and a near-contemptuous abuse of the processes of a federal court. (294 F 2d at 786)

There is, however, more involved here than the time element, namely, a vituperous tendency of counsel to read some heinous motive into the acts of anyone who dares to oppose him and of every judge who rules adversely to him. . . (294 F. 2d at 792)

We think that fact of timing is significant, and it is certainly consistent with the pattern which the record reveals of charging both the dead and the living with fraud whenever an adverse ruling is contemplated or becomes a reality. (294 F. 2d at 792)

Because we are conviced that the record in this case presents a contemptible, if not contemptuous, abuse of the legal processes of a federal court, we have dwelt at length upon a historical resume of the record facts as they have come to our attention. We did that advisedly in order that there may be no mistake that we are cognizant of the nature and severity of the question with which we deal. We find a sordid picture of the repeated use of ill-founded charges of fraud as a trial tactic which is foreign to established concepts of honest and ethical advocacy. We want it clearly understood that repetition of that practice as disclosed by this record will not be tolerated in the future. (294 F. 2d at 794-5)

The proceeding filed inthe Lake Superior Court



was challenged in Federal District Court. In reversing a decision to the contrary, the Court of Appeals, Seventh Circuit, ultimately held that the general principles of res judicata precluded the Respondent from relitigating the issue determined in the prior federal proceeding. Samuel C. Ennis and Company, Inc., et al. v. Woodmar Realty Company, et al., 542 F. 2d 45. This Court now takes judicial notice of such decision.

The above findings of fact establish that upon an examination of the history of this litigation a very reasonable inference can be drawn that Respondent's motive in filing this suit in Lake Superior Court was to harass.

Whether or not the Respondent was authorized to file the suit in Lake Superior Court does not appear crucial under Disciplinary Rule 7-102(A)(1); this provision makes no exception for an attorney who has a client's authority. Disciplinary Rule 7-102(A)(1) precludes an attorney from filing harassing litigation.

In light of the above considerations this Court concludes that Respondent filed a suit and took action on behalf of his client when it was obvious that such suit would only serve to harass and maliciously injure

others; that such conduct is a violation of Disciplinary Rule 7-102(A)(1). Respondent's actions relative to this count are further violative of the provisions of Disciplinary Rules 1-102(A)(1), (5), and (6).

Counts XVI and XVII emanate from the Respondent's conduct in the case of Dubois v. Union Trust Company of Indianapolis, et al. It is charged that on the day of trial of this cause, the Respondent asked for a continuance to substitute the trustee in bankruptcy as the real party defendant. The Respondent had known for years that the trustee was the real party in interest, but waited until the last day. For such conduct the Respondent is specifically charged under Count XVI with violating the general provision of Disciplinary Rules 1-102(A)(1), (5), and (6), and Disciplinary Rule 7-102(A)(1) which prohibit taking an action merely to harass another. Special Judge West indicated that because of the delaying tactic being employed he would impose a sanction against the Respondent. Crumpacker then commented in the record that this was a lot of "bunk" and that he would "waltz" Judge West to the Disciplinary Commission if the sanction were allowed to stand. The Respondent



is charged under Count XVII with undignified or discourteous conduct before a tribunal in violation of Disciplinary Rule 7-106(C(6), and general violations of the Code of Professional Responsibility, to-wit: Disciplinary Rules 1-102(A)(1) and (6).

Upon examination of the matters submitted in this cause, we now find that on October 12, 1973, the Respondent, in a matter that ha dbeen pending for a number of years, moved to substitute parties. The plaintiff objected. The trial judge indicated that the change in parties had been known to defense counsel for along time prior to the trial date and no attempt had been made to substitute and further indicated an inclination to impose sanctions on defense counsel, Respondent. The Respondent then stated in open court, "that's the most abusive order I have ever heard a Judge emit from the stand, I, I'm going, if that order stands, we're going to take it up with the Disciplinary Commission and we'll, and I represent to you that as an officer of this Court you're going to get, we'll waltz you down there before the Commission as quickly as you can get there, do you understand?" Respondent added "and even faster. The

idea of that kind of bunk."

In light of the above findings, this Court concludes that the acts of the Respondent in the Dubois v. Union Trust Company of Indianapolis case constituted undignified and discourteous conduct before a tribunal. Accordingly, this Court now finds that the Respondent violated Disciplinary Rules 1-102(A)(1) and (6) and 7-106(C)(6) as charged under Count XVII of the amended complaint. We further find, however, that the evidence is insufficient to support a finding of misconduct as charged under Count XVI of the amended complaint.

Under Count XVIII of the amended complaint the Respondent is charged with violating Cannon 11 of the American Bar Association's Canons of Professional Ethics and under Count XIX of the amended complaint the Respondent is charged with violating Disciplinary Rules 1-102(A)(1), (5), and (6), 7-101 (A)(3) and 9-102(B)(4). Both of these counts concern the internal financial affairs of the Respondent's former law firm. We anticipate that the underlying issues in these charges will be resolved in the final settlement of the law firm obligations and assets. We find the evidence of record insufficient to support a finding



of professional misconduct under Counts XVIII and XIX of the amended complaint.

It now becomes the duty of this Court to impose an appropriate disciplinary sanction by reason of the above-cited acts of misconduct. As this Court has noted on several previous occasions, in reaching such decision many factors are considered, such as the nature of the violation, the specific acts of misconduct, this Court's responsibility to preserve the integrity of the Bar, and the risk, if any, to which we will subject the public by permitting the Respondent to continue in the profession or be reinstated at some future date. In re Vincent (1978), __ Ind. __ 374 N.E. 2d 40; In re Tabak (1977), __ Ind. __, 362 N.E. 2d 475; In re Murray (1977), __ Ind. __, 362 N.E. 2d 128.

In the present case, the evidence presents a particular course of conduct totally contrary to the effective administration of justice and all standards of professional conduct. The acts set out under the various counts wherein this Court has found misconduct create a picture of a vicious, sinister person, tunnel-visioned by personal pique, and willing to

forego all professional responsibilities which conflict with acts of preconceived vengence on personal enemies. The Respondent's wrath has no bounds and his ire affixes to any and all persons who oppose him, even if such opposition is in a professional capacity. The Respondent verbally insults his adversaries at a personal level. Professional advocacy is totally submerged into vitriolic obliquy and all of the Respondent's adversaries, professional or personal, immediately become part and parcel of a grand fraud or conspiracy being perpetrated on some party for whom the Respondent asserts representation.

The course of conduct demonstrated by the Respondent has no place within the contemporary practice of law. A lawyer owes an obligation to his client to provide the best representation possible, an obligation to the legal profession to strive for justice, and an obligation to himself to meet the demands of his profession. When a lawyer looses sight of his purpose and uses the legal system for personal vengence, he fails in his obligations to his client, profession, and self. In the present cause the Respondent used



information gained in the course of professional services to form the basis of a suit against his former client; he employed the legal system as a vehicle for personal vengence; and in the end the Respondent abandoned any standard of professional behavior. This conduct, unfortunately, represents a total failure of all obligations.

In light of the above considerations, this Court is forced to conclude that the strongest sanction available under the Constitution of the State of Indiana must be imposed to preserve the integrity of the legal profession and to protect the public from future acts of misconduct as found in this case. It is therefore ordered that by reason of the misconduct found in this cause the Respondent be, and he hereby is, disbarred as an attorney in the State of Indiana.[1]

Costs of these proceedings are assessed against the Respondent.

Pivarnik, J., not participating.

---

1) This court finds it imperative to comment on

Respondent's behavior during the lengthy hearing of this matter. His outbursts, insults toward witnesses and opposing counsel, and insinuations of collusion on the part of the Commission and its staff, went far beyond any measure of effective advocacy. The record is replete with instances of such conduct demonstrating a total disregard for the proceeding itself, and courtroom decorum generally. The following exerpts are but a few examples:

> Tr. 127; (I)f the Court undertakes to listen to this Commission that it isn't interested in maintaining the honorable integrity of the profession, but is interested rather in attempting to smear and destroy a reputation of a lawyer, then I say that is the way to let them foreclose any enquiry into this case."

Tr. 139: To witness Donnersberger: "You can remember the magic words that are in the Commission's fcolishness?" Hughes: "Your Honor, I object to the representations Mr. Crumpacker is making about the Commission." Respondent: "Why don't you leave."

Tr. 141; ". . .(A)s far as I am concerned, the Court (J. West) did nothing but drink himself to oblivion at the Tallyho down in the outskirts of Peru and conduct night court for the Bunker Hill Academy. And he didn't do a damn thing except get drunk and get thrown out of office when he ran again."

Tr. 175; "My question was did I ask you (Donnersberger) Mr. Courtesy, for the benefit of the smirking people of the grievance



committee who are, in my opinion, eighteen karat H.A.'s."

Hughes: "Your Honor, I don't think we should have to sit here and be subjected to that_____."

Crumpacker: "I know you don't, you're too dumb. But I don't like these smirks at my back. When smart alecks make some statements . . ."

Tr. 218; (When Res pondent's Motion to Separate Witnesses was denied) "We are going to seek redress against these men and it's going to be a solid lawsuit against them for vicious attacks upon the character and integrity. . . "

Hughes: "Your Honor, would the record show that when Mr. Crumpacker said a moment ago that he was going to file solid lawsuits that he pointed in the direction of Mr. Hughes and Mr. Stevens and Mr. Grabham."

Tr. 588; "Substantially, the law firm Abrahamson, Reed & Tanasijevich is known in Hammond as Toad, Weasel and Skunk and they have been actively participating under that appellation."

Tr. 771; About Abrahamson: "Well, it's irritating because I know him well enough to know that he couldn't make a living on his own hook. . . . If he is going to sit here, if you won't throw him out, and he should be thrown out of all courts of law, at least he should be admonished not to be passing sweetheart notes to his sweetheart Hughes and Hughes.

Tr. 788; I think that your (Hughes') courtesy couldn't get by in the lowest J.P. Court. When the J.P. Courts are all abolished, why, you will be on the relief rolls. . ."

Tr. 797; "My defense is based on the truth and I accuse you (Hughes) of falsifying the document that is tendered (Ex. 25 - later admitted).

Tr. 987; (During the introduction of Plaintiff's Ex. 27 and objections thereto) "Now, because Mr. Abrahamson is here and directing the travelling road show and gets ahold of Mr. Hughes and says now. . ."

Tr. 1076; (In reference to witness McQuillan) ". . .I think that he should be horsewhipped and put in jail, that's my opinion."

Tr. 1111; "And Mr. McQuillan deserves more than having his head stuck in a toilet bowl."

Tr. 1114; "Now, if this outfit, this Disciplinary Commission, is permitted to come up and take lawyers apart in pending cases and try to discipline another lawyer because he calls another guy (McQuillan) that swindled his client out of about a hundred thousand dollars in the course of a deposition that he's been evading, why, I say, the Disciplinary Commission is going to be the most foolish, inappropriate bunch of time wasters, and I think that that's what we are confronted with here. Now, Mr. Hughes is up here only because Abrahamson and Reed who have been here ever since the case started want him here."

Tr. 1118; "He (McQuillan) is as sleek as anybody. You (Hughes) haven't been around."

Tr. 1119; "I think it is a lot of bunk. He (Hughes) doesn't know anything about this case. I happen to know about this case and Mr. Hughes does not.

Tr. 1157; In an objection to question posed to witness Stanish: "And then to come in here with this preposterous bunch of bunk and of a political guy, to come in and try to create something that did not happen in chambers is absolutely ridiculous and we object to any effort on the part of this



disgruntled, defeated candidate for public office to blame somebody else. . ."

Tr. 1161: "This man (Stanish) is beyond abuse. I know him like a book."
"And I think it's an outrage to be here. And you (Hughes) never tried a case and you will never try one and win. . ."

Tr. 1166; "(Y)ou (to Stanish) don't understand common sense or English."

Tr. 1213; "I represent that he (Spangler) was a swindler and that he was attempting to swindle the Herschbach family."

Tr. 1216; To witness Spangler while on the stand: "There isn't anything you wouldn't do, in my opinion. I think that you have swindled more people than you'll ever know. ."

Tr. 2443; "I think that he (J. Moody) should be removed from office, this man, for violating the natural privileges of the citizens and taxpayers of the county."

Tr. 1505; "Rudolph Val Dawson, the syndicate boss. . . "

Tr. 1519; "That was Reed who was the fellow that had Moody in his pocket. . ."

Tr. 1520; ". . . I object to the Disciplinary Commission aiding and abetting the continued perpetration of a fraud on the courts through trying to cover the Declaratory Judgment of August 6, 1971. . ."

Tr. 1540; On direct examination: ". . . my feeling is that he (Mr. Grabham) is a disgrace to the legal profession. He is a disgrace to the courts. He is a freeloader and should be eliminated.

Tr. 1558; "The Gestapo has not asked me to produce a single record."

Hughes: "You mean us I guess?"

Crumpacker: "Yes, I am talking about the Disciplinary Commission."

Tr. 1161; Hughes to Crumpacker on direct:

"I wonder if you might at this time read into evidence the names of those persons to whom you sent copies of plaintiff's Exhibit 45."

Crumpacker: "no I'm not going to do it. . . .I will be damned if I am going to become an agent for this foolish neck-tie party by reading into evidence copies of letters that have no bearing on any issues except the vindictiveness. . . "

Tr. 1876; "I believe that he (Hughes) is a disgrace to the profession." Page 2630; "I assume that you are unmarried, Mr. Hughes, and that you and Mr. Abrahamson have an affinity to each other, drawn to each other. I assume you are a single person."

Hughes: "That is such an outrageous, ridiculous, asinine thing for you to say I can't even. . . are you accusing me of being a fairy?"

Crumpacker: "You wear the shoe that fits you."

Tr. 3090; "Stanish is a, that is, the judge is a liar. Stanish is a liar."

Tr. 3528; "(Y)ou (Hughes) are the biggest dead beat I have ever known."

Although being admonished on many occasions, he continued in his course of conduct. The Respondent demonstrated a total disregard of the authority vested in he Hearing Officer.

Had this Court not decided to disbar the Respondent for the conduct set forth in the complaint, this



matter would be referred again to the Disciplinary Commission for the consideration of new charges based on the Respondent's conduct during these disciplinary proceedings. However, in that the Respondent has been disbarred, the processing of additional charges would be a senseless act.

Nevertheless, this Court deems it necessary to give notice that a disciplinary proceeding is a matter before this tribunal. The rules and courtesies governing an attorney's behavior have application.

BURNS INDIANA STATUTES ANNOTATED
CODE EDITION, COURT RULES, BOOK 2

PART VI, RULES FOR ADMISSION TO THE BAR
AND THE DISCIPLINE OF ATTORNEYS

Admission and Disciplinary Rule 23

DISCIPLINARY COMMISSION AND PROCEEDINGS

* * * * *

Section 2. Grounds for Discipline

Grounds for discipline and disciplinary action shall be conduct that violates the Code of Professional Responsibility and the Code of Judicial Conduct and Ethics heretofore adopted by this Court as well as the standards or rules of legal and judicial ethics or professional responsibility adopted from time to time by this Court.

* * * * *

Section 10. Investigatory Procedures

(a) Upon receipt of a written, verified claim of misconduct [hereinafter referred to as "the grievance"], from a member of the public, a member of this Bar or a member of the Commission and completion of such preliminary investigation as he deems appropriate, the Executive Secretary shall:

1. Dismiss the claim with the approval of the Commission, if he determines that it raises no substantial question of misconduct; or
2. If he determines that it does raise a substantial question of misconduct, send a copy of the grievance by certified mail to the attorney against whom the grievance is filed [hereinafter referred to as "the respondent"] and shall request a written response within twenty [20] days after the respondent receives a copy of the grievance.



In the event of a dismissal as provided herein, the person filing the grievance and the respondent shall be given written notice of the Executive Secretary's determination. In the event of a determination that a substantial question exists, the matter shall proceed to (b) hereinafter. Amended Nov. 30, 1971.

(b) Thereafter, within forty-five [45] days, after notice to the respondent, if the Executive Secretary, upon consideration of the grievance, the preliminary investigation and any response from the respondent, determines there is a reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be docketed and investigated. If he determines that no such reasonable cause exists, the grievance shall be dismissed with the approval of the Commission. In either event, the person filing the grievance [hereinafter referred to as "the complainant"] and the respondent shall be given written notice of the Executive Secretary's determination.

(c) If the grievance is docketed, for investigation, the Executive Secretary shall conduct an investigation of the

grievance. Upon completion of the investigation the Executive Secretary shall promptly make a report of the investigation and his recommendations to the Commission, at its next meetings.

* * * * *

Section 12. Prosecution of Grievances

(a) In the event the Commission determines that the misconduct, if proven, would warrant disciplinary action the Executive Secretary shall prepare a verified complaint which sets forth the misconduct with which the respondent is charged and shall prosecute the case.

(b) The complaint shall be entitled "In the Matter_____", naming the respondent. Six [6] copies shall be filed with this Court. The complaint may be verified on information and belief, and shall be served as in civil actions upon the respondent and the complainant promptly after filing. If the respondent cannot be found, this Court will, upon a proper showing, direct notice to be given by publication as in civil actions.

Section 13. Hearing Officers

In addition to the powers and duties set forth in this Rule, hearing officers shall have the power and duty to:

(a) conduct a hearing on the complaint of misconduct within sixty [60] days after the Commission's determination of reasonable cause;

(b) administer oaths to witnesses;

(c) receive evidence and make written



findings of fact and recommendations to the Court; and

(d) do all things necessary and proper to carry out their responsibilities under this rule.

Section 14. Proceedings before the Hearing Officers

(a) The rules of pleading and practice in civil cases shall not apply. No dilatory motions shall be entertained. The case shall be heard on the complaint and an answer which may be filed by the respondent within thirty [30] days after notice of the filing of the complaint. An answer, if filed, may assert any legal defense. If the respondent shall elect to file an answer, he shall file six [6] copies with this Court. An answer need not be filed, in which case the complaint shall be taken as denied. A respondent may on a showing of good cause petition for a change of hearing officer within ten [10] days after the appointment of such hearing officer.

(b) The complainant and the respondent shall be given not less than fifteen [15] days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him and to produce and require the production of evidence and witnesses in his own behalf, as in civil proceedings.

(c) The proceedings may be summary in form and shall be without the intervention of a jury and shall be reported.

(d) Within thirty (30) days after the conclusion of the hearing, the hearing officer shall determine whether misconduct has been proven by preponderance of the evidence and shall submit to the Supreme Court written findings of fact deduced by him from the evidence. The hearing officer may submit recommendations concerning the disposition of the case with his findings of fact, but such recommendations shall be given only such weight by the court as it believes to be consistent with a paramount consideration of uniformity of discipline throughout the state. A copy of said findings and recommendations, if any, shall be served by the hearing officer on the respondent and the executive secretary of the Disciplinary Commission, at the time of filing the same with the Supreme Court. This rule shall be effective on and after its adoption. Ammended eff. March 14, 1973.

* * * * *

Section 15. Supreme Court Review

(a) The respondent, complainant or Commission shall have thirty [30] days after the filing of the hearing officers inding and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty [30] days of the finding and recommendation of the hearing officer the Supreme Court shall enter judgment or such other appropriate order in the premises.

(b) Upon receipt of written recommendation for suspension, pending final determination of the cause, this Court may



forthwith enter an order of suspension thereon. Respondent shall have fifteen [15] days thereafter to petition this Court for a review and a dissolution of such order.

(c) In the event that this Court grants a petition under this Section 15, briefs may be filed and oral arguments heard, as the Court shall determine. Such briefs need not conform to the rules of this Court. Upon a review the Court shall determine whether the findings and recommendations of the hearing officer or officers are supported by sufficient evidence and shall enter its judgment, with or without opinions as the Court shall determine.

* * * * *

Section 24. Rules of Procedure

The Commission may adopt rules and regulations for the efficient discharge of its powers and duties. Such rules and regulations shall become effective upon approval by a majority of this Court.

Section 25. Effective Date

This Rule shall be effective as of June 23, 1971. Cases pending before the local and State Bar Association Grievance Committees as of the effective date may be administered and adjudicated by such committees in accordance with the procedures employed by such committees prior to the adoption of this Rule or may be referred by such committees to the Commission for administration and adjudication in accordance with this Rule. Provided further these rules

shall be applicable to all pending disciplinary actions except to the extent that the Court finds their application in a particular case pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure shall apply.

* * * * *

On January 1, 1977, the Supreme Court of Indiana adopted the following Amendment to A & D Rule 23, Section 15:

(c) In the event a party does not concur in a factual finding made by the hearing officer and asserts error in such finding in the petition for review, such party shall file with the petition for review a record of all the evidence before the hearing officer relating to this factual issue. Within thirty (30) days of the filing of the transcript, opposing parties may file such additional transcript as deemed necessary to resolve the factual issue so raised in the petition for review. Any transcript filed must be settled, signed and certified as true and correct by the hearing officer. The fee paid for procuring a transcript or additional transcript shall be included in the costs of the disciplinary proceeding.



EXCERPTS FROM THE
VERIFIED FIRST DEFENSE
SERVED AND FILED BY PETITIONER
ON DECEMBER 18, 1978

IN THE
SUPREME COURT OF THE STATE OF INDIANA

Filed
December 18, 1974

| | | |
|---|---|---|
| IN THE MATTER OF | ) | |
| | ) | Cause No. 974 S 187 |
| OWEN W. CRUMPACKER | ) | |

RESPONDENT'S FIRST DEFENSE
(ADDRESSED TO ALL TWENTY COUNTS OF THE CHARGES SET FORTH IN THE AFFIDAVIT OR INDICTMENT OF THE DISCIPLINARY COMMISSION)

(Unconstitutionality of the Supreme Court's Discipline Rule 23, Sections 1 Through 25, And The Procedures Adopted By The Disciplinary Commission Against Respondent Thereunder As Being In Contravention Of The XIV Amendment of the U.S. Constitution, And In Violation Of The Respondent's Rights Under Article 1, Sections 13 And 21 Of The Constitution Of The State Of Indiana.)

Comes now Owen W. Crumpacker, Respondent in the above-captioned cause, by counsel, and by way of First Defense against all twenty of the charges filed against him by the Disciplinary Commission, respectfully represents to Hon. Richard M. Given, Chief Justice of the Supreme Court, and the other

Honorable Justices of said Court as follows:

(1) Your Respondent, Owen W. Crumpacker, was admitted to the Bar of the Supreme Court of Indiana on January 4, 1939, and to the Bar of the Supreme Court of the United States on March 10, 1947. In addition, he is now and at all times has been a member in good standing of the Bars of the United States District Court for the Northern District of Indiana, and the United States Circuit Court of Appeals for the Seventh Circuit. He has never been charged with or convicted of any misdemeanor or crime of any kind or nature and has never been subjected to discipline by the Disciplinary Commission of the Supreme Court of Indiana, the Attorney General of Indiana, or any Bar Association. Respondent is also a member in good standing of the Hammond, Indiana, and American Bar Associations. He has never been charged with contempt of Court in connection with any proceedings in which he has participated as a member of the Bar.

(2) Respondent, sometime on or about September 24, 1974, was served by the Sheriff of Lake County, Indiana, with a Verified Complaint for Disciplinary Action signed and sworn to, upon information and belief, by one Richard H. Grabham, Executive Secretary, Indiana Supreme Court Disciplinary Commission. The Verified Complaint, on



its face, purports to consist of a "scatter-shot" information and/or indictment with twenty (20) separate counts involving, among other things, charges of the commission of the crimes of perjury and fraud and deceit in the Court of Appeals of Indiana on March 12, 1973 in connection with an appeal from the Lake Superior Court, Room No. One, entitled Eibel & Sons, Inc. and the Board of Commissioners of Lake County, Indiana vs. Dedelow, Inc., Duane Dedelow, James R. Dedelow and Peter J. Vukovich, Court of Appeals Cause No. 871 A 162, 308 N.E.2d 420, 41 Ind. Dec. 175, being an appeal from a Judgment entered in favor of Dedelow, Inc. et al. by Hon. Cordell C. Pinkerton on July 24, 1971 in a bench trial in a case filed by Hammond Attorney Kenneth D. Reed, a former employee, associate and partner of Respondent, on January 14, 1971, under Cause No. 171-43 (Counts I and II); alleged misconduct in breach of confidential relationship between one Richard L. Klaas and Respondent, growing out of an alleged attorney-client relationship, by revealing, in writing and on March 12, 1971, privileged communications between Richard L. Klaas and Respondent to the Court of Appeals in Cause No. 871 A 162, supra, (Count III); a charge of criminal and/or civil conversion of papers or files belonging to un-named clients of Hammond Attorneys Kenneth D. Reed and Harold

Abrahamson (also a former associate, employee and partner of Respondent) on unspecified occasions (Count IV); alleged professional misconduct in naming Richard L. Klaas, a client of Hammond Attorneys Kenneth D. Reed and Harold Abrahamson, as one of forty-two (42) defendants in the case of Connelly etc. vs. J. J. Forszt et al., Lake Superior Court Room No. Five, Hammond, Indiana, Cause No. 573-448 filed on July 26, 1973 and now pending on appeal as Court of Appeals No. 3-174 A 15 because, according to the charge, Respondent's former law firm, which included Abrahamson and Reed, formerly represented Richard L. Klaas on the same matters that were in issue in Connelly etc. vs. J. J. Forszt et al., said alleged professional misconduct having been judicially determined to be such by an order of the Lake Circuit Court in a case entitled John Bryant, Jr. et al vs. Lake County Trust Company, as Trustee et al., Lake Circuit Court No. C71-1384, Gary Superior Court Judge, James T. Moody, Special Judge, the purported misconduct in this instance consisting of making an unauthorized disclosure of previously undisclosed privileged information to the prejudice of the former law firm's alleged client, Richard L. Klaas (Count V); a criminal charge of common barratry in soliciting one Russell C. Hopper to act as a class representative in the



case of Connelly et al. vs. J.J. Forszt et al., supra, (Count VI); procuring the preparation and circulation of a letter over the signature of Respondent's client Martin J. Connelly, in the case of Connelly etc. vs. J.J. Forszt et al. containing laudatory statements about Respondent as an alleged "indirect solicitation of employment as an attorney" (Count VII); a charge of criminal assault on Attorney William Spangler, on May 6, 1971, (Count VIII); criminal or civil slander of Hammond Attorney G. Edward McHie in calling said attorney "a little, yellow son-of-a-bitch: on an unspecified date (Count IX); alleged criminal or civil slander of Hammond Attorney Richard W. Johnson, Auburn Attorney Winslow Van Horne, and Warren Circuit Court Judge Robert M. Hall during a hearing in the Lake Superior Court Room No. One, Hammond, Indiana, on March 24, 1974 in the case of Van Horne vs. Squarcy, Lake Superior Court No. 174-292 (Count X); a charge of criminal disorderly conduct during a deposition being taken in the case of Herschbach vs. Hershbach et al., Jasper Circuit Court No. 286-70, in insulting a witness and Gary Attorney John P. McQuillan (Count XI); a charge of criminal contempt of Court in publicly disseminating copies of a legal brief on June 10, 1974 containing prohibited, extra-judicial statements concerning pending litigation being the case of John Bryant Jr. et al. vs. Lake County Trust

Company as Trustee et al, Lake Circuit Court No. C71-1384, supra, in which proceedings Respondent's former employees, associates and partners, Abrahamson and Reed, purported to represent Lake County Trust Company, as Trustee under Trust No. 1653 (Count XII); a charge of criminal contempt of Court and/or libel committed on or about July 1, 1974 consisting of the releasing of a letter to the press attacking a ruling made by Special Judge John F. Moody (sic) in the case of Bryant Jr. et al vs. Lake County Trust Company et al., supra, said letter consisting of the making of a false accusation against a judicial officer (Count XIII); a charge of criminal contempt and/or libel committed on or about August 8, 1974 in releasing a letter impugning the integrity of Judge James T. Moody through false, groundless and unmeritorious charges (Count XIV); criminal contempt of Court and/or slander committed in the Hammond City Court during closing argument in the case of State vs. Indiana Harbor Belt Railroad Company in making false, misleading and prejudicial accusations about the close connection between Special Judge John Stanish and the Hammond Police Department (Count XV); a charge of filing and prosecuting a vexatious and unmeritorious lawsuit on May 3, 1974 in the Lake Superior Court Room No. One, Hammond, Indiana on behalf of the Woodmar Realty Company as plaintiff, said case being entitled



Woodmar Realty Company vs. S. C. Ennis and Company, Inc. et al., Lake Superior Court Room No. One, Cause No. 174-439 (Count XVI); a charge of causing needless delay in the case of DuBois vs. Union Trust Company of Indianapolis et al., Jasper Circuit Court No. 197-60, on October 12, 1973 by calling the Court's attention to the fact that the successors in interest of the Penn Central Transportation Company had not been substituted by said defendant (Count XVII); a charge of direct contempt of Court committed on October 12, 1973 in the case of DuBois vs. Union Trust Company of Indianapolis, et al., Jasper Circuit Court, Cause No. 197-60, said contempt consisting of calling the Judge's threatened sanctions "bunk" and statements that he (Respondent) would "waltz" Judge West down to the Disciplinary Commission (Count XVIII); a charge that Respondent, on or about March of 1970, procured a loan of $7500 in the name of his firm, Crumpacker and Abrahamson, that the proceeds of the loan were deposited in the firm's trust account at the Calumet National Bank and that Respondent then drew three checks on the account payable to himself in the amount of $7600 and deposited said checks in the law firm's capital account in the Calumet National Bank, that Respondent then drew a check to himself for $7600 on said capital account and deposited said check in his personal

account with the notation that said check was drawn for the payment of taxes and that said conduct involved deceit and the failure to preserve the identity of funds and property of a client (Count XIX); and a charge of alleged failure on the part of Respondent to pay $1,750.00 less one-third (1/3) attorneys fees, to Harold Abrahamson's client Morris Victor in connection with the case of Victor vs. Sylvester et al., Porter Superior Court, Cause No. 70 PSC 300, said Harold Abrahamson, being a former employee, associate and partner of Respondent (Count XX).

(3) At the time the twenty count information or indictment was filed, to-wit: September 17, 1974, Respondent was actively engaged in the practice of law with offices at 300 Hammond Building, Hammond, Indiana and a substantial number of employees are dependent upon Respondent and his law practice for their salaries, Social Security payments, withholding taxes, etc. In addition to other professional obligations involving heavy professional responsibilities, Respondent Owen W. Crumpacker is, by written contract, (having received retainer fees) obliged to represent landowners and prosecute the rights of the landowners to fair and just compensation in actions presently pending wherein the State of Indiana, through the State Highway Department, has taken possession of



valuable lands in Porter County, Indiana to-wit: State vs. Portage Land Corporation, LaPorte Circuit Court, Cause No. 32494; State vs. Leona Anderson Stater, Porter Superior Court, 68 PSC 604; State vs. DeVries, Porter Superior Court Cause No. 69 PSC 496; State vs. Maneikis, Porter Superior Court, Cause No. 68 PSC 509; State vs. Franklin Saemann, Porter Superior Court, Cause No. 68 PSC 463; State vs. Edith & Walter Thornton, Lake Circuit Court, Cause No. C71-653; State vs. Mercantile National Bank, as Trustee, Lake Circuit Court, Cause No. C71-652; and others. Prior to January 1, 1973, Respondent Owen W. Crumpacker had, in good faith, contracted with landowners and has invested considerable money (advanced by the landowners_ in purchasing maps, plats, title information, deeds, etc. in preparation for forthcoming trials. In addition, Respondent Owen Crumpacker has invested considerable sums of money in office supplies, books, equipment, stationery, etc. devoted to the practice of law. Said Admission and Discipline Rule 23 and the procedures adopted by the Disciplinary Commission thereunder undertake to compel and force a breach of Respondent's contract rights and obligations, and a confiscation of his property rights and interests, subjecting him to great losses and damage without any remedy. Further, his employees, wholly without fault, are deprived of their property rights.

(4) Respondent is presently charged further with the duty and obligation of representing the landowners in the U.S. District Court for the Northern District of Indiana and the U.S. Court of Appeals for the Seventh Circuit in approximately ten (10) pending cases in which the Government of the United States is seeking to acquire valuable lands from their owners for an alleged public purpose under the Indiana Dunes National Lakeshore Act. Respondent Owen W. Crumpacker is presently charged with the full responsibility of representing the landowners and in presenting their defenses and objections, both below and on appeal. These obligations were assumed in good faith prior to January 1, 1973 when the first set of disciplinary proceedings against Respondent were released. Three of the condemnation cases are presently pending in the U.S. Court of Appeals for the Seventh Circuit. They involve substantial expenditures of time and money. The landowners have no means or method of protecting their rights and interests if their attorney, Respondent Owen W. Crumpacker, is successfully disbarred by the Disciplinary Commission pursuant to the twenty-count information and/or indictment. They, also, will suffer substantial financial losses without any remedy or means of protecting their remaining rights and interests.



(6) Respondent Owen W. Crumpacker is charged with the responsibility of looking after, protecting and prosecuting cases for the Woodmar Realty Company, an Indiana corporation, and its stockholders. Respondent Owen W. Crumpacker has represented said Woodmar Realty Company ever since January 13, 1941 when reorganization proceedings were instituted against it by creditors' petition, and through and including the date of the dismissal of the proceedings by order of Milwaukee Federal Judge Robert E. Tehan on May 16, 1969. Respondent Owen W. Crumpacker has participated in hearings in this litigation covering innumerable court days. He has prepared, served and filed printed briefs in not less than seven (7) appeals. He prepared and prosecuted more than nine (9) original actions in mandamus against Milwaukee Federal Judge Robert E. Tehan. He is presently prosecuting a Two and A Half Million Dollar damage suit for and on behalf of the Woodmar Realty Company and its stockholders in the Lake Superior Court Room No. One, Cause No. 174-439 thereof. The case was filed on May 3, 1974. In addition, the Woodmar Realty Company is the sole claimant to a fund in the amount of One Hundred Ten Thousand Dollars ($110,000.00) in the hands of a Successor-Trustee, in Cause No. 51815, Lake Superior Court, Hammond, Indiana, and is the sole claimant to Forty-Nine Thousand Dollars ($49,000.00) in the custody of

the Administrator of Courts in the Supreme Court Building in Washington, D.C. As the Disciplinary Commission is aware, these valuable rights will be lost to the parties in interest if Respondent Owen W. Crumpacker is disbarred under the procedures adopted by the Supreme Court on June 23, 1971 and the procedures instituted by the Disciplinary Commission.

(7) Respondent Owen W. Crumpacker has been and is being proceeded against and disbarred without having been accorded the right to confront witnesses, the right to preliminary hearings, the right to a jury trial with reference to the deprivation of his property rights and his right to pursue a livelihood, his right to equal protection of the laws afforded to other citizens with reference to his property rights and liberty, and without the right to a trial and due process of law as established by the Constitution of the United States and Rules of Civil and Criminal Procedure afforded to all other citizens in the State of Indiana

* * * * * * * * * * *

(9) The procedures adopted by the Disciplinary Commission in order to disbar Respondent are violative of the Fourteenth Amendment (due process) to the U. S. Constitution. The initial investigation was undertaken at the instance of Hammond Attorney Edmond J. Leeney on or prior to March 10, 1972. Said Edmond J. Leeney is and for many years



has been the personal attorney for Charles Levin, law partner of Disciplinary Commission Chairman Rudolph Val Dawson. Both Charles Levin and Edmond J. Leeney are among the principal actors in the Woodmar Realty Company reorganization, U.S.D.C. No. 3151, described in August of 1961 by the late Franklin Riter, a distinguished member of the Board of Governors of the American Bar Association, and a member of the Rules Committee of the U.S. Supreme Court as "so dreadful a story of judicial dereliction that it is impossible to find a sequel." Leeney and Levin, following interviews by a nationally known investigative newspaper reporter with reference to the handling by Leeney and Floyd R. Murray of an escrow account in the Mercantile National Bank of Indiana where they had deposited approximately Sixty-Five Thousand Dollars of the Woodmar Realty Company's cash assets, induced the Supreme Court of Indiana to dismiss a pending appeal, being the case of Armina M. Thorpe vs. Straley Thorpe, Indiana Supreme Court No. 770 S 141. Leeney, who had withdrawn his appearance as an attorney in the case, corresponded, ex parte, with the members of the Supreme Court of Indiana advising the Justices that Respondent had perpetrated a serious fraud on the Supreme Court, the State of Indiana, and the Estate Tax Division of the Treasury Department of

the U.S. in procuring an order, in January of 1972, reversing the divorce decree rendered by the Lake Superior Court Room No. Three in Gary on February 8 and October 20, 1966. The dismissal of her appeal without a hearing induced the appellant, Armina M. Thorpe, to make inquiry of the Attorney General Theodore L. Sendak. Thereupon, said Attorney General Sendak referred Armina Thorpe's inquiry to one John B. Ramming, the Executive Secretary of the Disciplinary Commission, where the Attorney General's son was employed as a law clerk. Ramming, instead of undertaking to investigate Armina M. Thorpe's complaint, directed two agents, Paul Beam and Cecil Melvin, to conduct a secret investigation into the charges against Respondent made by Edmond J. Leeney in his letter to the Supreme Court of Indiana under date of March 10, 1972. Paul Beam, an attorney and employee of the Indiana State Bar Association, acted as a "volunteer" investigator for the Disciplinary Commission. Cecil Melvin, retired State Policeman on pension, was employed by the Disciplinary Commission on or about February 1, 1972 to conduct secret and confidential investigations into the conduct of members of the Bar of the Supreme Court of Indiana. Beam's salary and expenses are and were paid out of annual dues paid by members of the Indiana State Bar Association. Melvin is paid



from a fund created by an annual fee of $15.00 per lawyer paid to the Clerk of the Supreme Court for the privilege of practicing law in Indiana. Neither secret agents Paul Beam nor Cecil Melvin have or had any legal or statutory authority to conduct private and surreptitious investigations into the professional affairs of members of the Bar of the Supreme Court of Indiana. In April and/or May of 1972, Paul Beam and Cecil Melvin, acting as confidential agents of the Disciplinary Commission, came to Hammond for the purpose of conducting a secret investigation into the Leeney charges notwithstanding the fact that said Edmond J. Leeney desired to keep anonymous by failing and refusing to sign and file an official, formal complaint with the Disciplinary Commission. The two secret agents interviewed Leeney in Hammond and Leeney's associate in the case of Armina Thorpe vs. Straley Thorpe, to-wit: John Skinner, a Crown Point attorney, as well as the late Straley Thorpe's law partner, Byron Bamber. They scrupulously avoided contacting Respondent, his client, Armina Thorpe, the attorney for the Estate of Straley M. Thorpe, James K. Whitaker, or Judge Cordell C. Pinkerton, in whose Court a substantial portion of the gross fraud charged by Leeney had allegedly occurred. Approximately eight months after the Beam-Melvin investigation, and on or about January 10, 1973, Executive Secretary John B. Ramming signed and

swore to a formal complaint against Respondent allegedly based upon the serious charges of fraud as set forth in the letter of Edmond J. Leeney. These charges were promptly denied in writing. Despite repeated requests by Respondent, the Disciplinary Commission has at all times failed and refused to either dismiss the January 10, 1973 complaint or file the same in the Supreme Court where the falsity and malicious character of the charges could be demonstrated by Respondent.

* * * * * * * * * *

(11) Kenneth D. Reed, and his law partner Harold Abrahamson, undertook to furnish their colleague, Saul I. Ruman, with alleged information and evidence of professional misconduct on the part of Respondent. Saul I. Ruman, with the aid and assistance of Kenneth D. Reed, drafted ten separate counts of alleged misconduct and filed the same with the Disciplinary Commission on September 25, 1973. In January of 1974, Harold Abrahamson drafted and filed a further charge for and on behalf of his client, Morris Victor. On June 24, 1974, Kenneth D. Reed procured the rubber stamp signature of Special Judge James T. Moody on "FINDINGS OF FACT," "CONCLUSIONS OF LAW," and "JUDGMENT, ORDER AND DECREE" purporting to find Respondent guilty of a "conflict of interest" in undertaking to appear for Martin J. Connelly and Dorothy M. Connelly as injunction defendants in a



proceeding instituted by Saul I. Ruman in said Cause No. C71-1384 of the Lake Circuit Court to enjoin the Connellys from interfering with a "COMPROMISE AGREEMENT" entered into by and between Kenneth D. Reed, Saul I. Ruman, County Attorney Joseph L. Skozen and Assistant County Attorney William J. Muha eliminating Saul I. Ruman's three lawsuits and approving the fraudulent declaratory judgment procured on August 6, 1971 in the Lake Superior Court Room No. Five. The draft as prepared by Reed and submitted to Special Judge James T. Moody includes a provision directing that the Findings be sent to the Disciplinary Commission. On June 24, 1974 when Judge Moody rubber-stamped Reed's tendered Findings, the Indiana Harbor law firm of Given, Dawson & Cappas had already been furnished with the Saul I. Ruman-Kenneth D. Reed complaint of September 25, 1973, which the law firm was redrafting as a matter of convenience to the Disciplinary Commission because the Disciplinary Commission was shorthanded through the resignation of Executive Secretary John B. Ramming. Saul I. Ruman, Kenneth D. Reed and Harold Abrahamson were fully aware of the activities of Given, Dawson & Cappas when Kenneth D. Reed prepared the June 24, 1974 decision for Judge Moody. Thereafter, Harold Abrahamson and Kenneth D. Reed, on or about July 5, 1974, had their client, Richard L. Klaas, (also one of the 42 defendants in the

Connelly lawsuit) sign an additional complaint against Respondent predicated upon Judge Moody's purported decision of June 24, 1974 in Lake Circuit Court Cause No. C71-1384. In August of 1974, Cecil Melvin and Disciplinary Commission law clerk Tom Jackson made a further trip to Hammond to interview the lawyers involved in the litigation referred to in the draft of the complaint prepared by Given, Dawson & Cappas in May. Following the August interviews, the law clerk, Tom Jackson, redrafted the complaint in its present form and caused the same to be filed in the Supreme Court on September 17, 1974.

(12) Amendment XIV to the Constitution of the United States provides in pertinent part as follows:

> "Section 1.
>
> * * * * * * * *
>
> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment V to the Constitution of the United States provides in pertinent part as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment



> of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment VI to the Constitution of the United States reads in pertinent part as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

The Constitution of the State of Indiana provides in pertinent part as follows:

> "Section 9. Free Speech and writing. No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write or print, freely, on any subject whatever; but for the abuse of that right, every person shall be responsible."

"Section 10. The truth in libel. In all prosecutions for libel, the truth of the matters alleged to be libellous may be given in justification."

"Section 12. Courts open - Due course of law - Administration of Justice. All Courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay."

"Section 13. Rights of accused. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor."

"Section 19. Jury in criminal cases -- Right to determine law and facts. -- In all criminal cases whatever, the jury shall have the right to determine the law and the facts."

"Section 20. Trial by jury inviolate in civil cases. In all civil cases, the right of trial by jury shall remain inviolate."

(13) In Counts I and II of the indictment or



information, Respondent Owen W. Crumpacker is charged with criminal offenses committed in the Court of Appeals of Indiana on March 12, 1973 in, allegedly, making a deliberate misrepresentation of authority to a Court of Law prejudicial to the orderly administration of justice and in making false statements, in writing, wherein Respondent "falsely stated under oath that he had authority to act as counsel for said James R. Dedelow, when in fact he had no authority; that such conduct by Respondent is violative of Disciplinary Rules, is illegal conduct constituting perjury, is a deceitful misrepresentation to a Court of Law and is prejudicial to the administration of justice." Burns' Indiana Statutes, Volume 4, Part 2, Sections 10-3801 through 10-3803 define the crime of perjury as charged in the information and/or indictment. Since the offenses charged were committed in the presence of the Court of Appeals, they constitute a direct contempt of Court as defined in Burns' Indiana Statutes, Annotated, Title 34, Chapter 7, Section 34-4-7-1. Such acts, if true, constitute a criminal contempt. Dale v. State, (1926) 198 Ind. 110, 150 N.E. 781, 49 ALR 647. Respondent is entitled to be tried in the Marion County Criminal Court with a jury trial. Under Burns' Indiana Statutes, Title 34, Section 34-4-7-7, Respondent is entitled to a trial for direct

contempt with a right of appeal to the Supreme Court of Indiana if he is found guilty. The attempt to deny Respondent of his constitutional rights as hereinabove defined, through a hearing officer and an abortive hearing without a jury trial and without a right of appeal constitute a denial of due process and a denial to Respondent of his right to equal protection under the law.

(14) In Count IV of the information or indictment, Respondent Owen W. Crumpacker is charged with the criminal offense of conversion of goods as defined by the Burns' Indiana Statutes, Volume 4, Part 2 Section 10-1704. Neither Abrahamson and Reed, nor any former client, have instituted any proceedings or claim under Burns' 10-1704. Respondent is entitled to a full-blown trial before a common law jury under the privileges and immunities guaranteed him under the United States and Indiana Constitutions. Admission and Disciplinary Rule 23 and the procedures adopted by the Disciplinary Commission against your Respondent deny him of his constitutional guarantees.

(15) In Count VI, Respondent is charged with the crime of being a common barrator as defined by Burns' Indiana Statutes, Volume 4, Part 2, Section 10-3108. Respondent has not been either charged with, tried, or found guilty of the offense charged in Count VI. He is entitled to be charged



with the crime and tried in the Lake Superior Court, Criminal Division, with the privileges and immunities afforded him under the Constitutions of the United States and the State of Indiana like any other citizen charged with the same crime. The Supreme Court Admission and Disciplinary Rule 23 and the procedures adopted thereunder are violative of the Constitutions of both the United States and the State of Indiana as hereinabove provided.

(16) In Count VII, Respondent is charged with conspiring with Martin J. Connelly to solicit law business in violation of Burns' Indiana Statutes, Volume 4, Part 2, Section 10-3110. Respondent is entitled to be formally charged with conspiracy to commit the offense and tried in the Lake Superior Court, Criminal Division, under the privileges and immunities guaranteed any and all citizens and residents of Lake County, Indiana. Admission and Disciplinary Rule 23 and the procedures adopted by the Disciplinary Commission are in contravention of the provisions of the U.S. Constitution and the Indiana Constitution as hereinabove set forth.

(17) In Count VIII of the information or indictment, Respondent Owen W. Crumpacker is charged with commiting an assault on William S. Spangler on May 6, 1971 as defined by Burns' Indiana

Statutes, Volume 4, Part 2, Section 10-402. Admission and Disciplinary Rule 23 and the procedures adopted by the Disciplinary Commission are violative of Respondent's constitutional right to be charged with the crime of assault by the Prosecuting Attorney and tried in the Lake Superior Court, Criminal Division, for the offense, with the right of appeal, like any other citizen and resident of the State of Indiana charged with the crime of assault. Admission and Discipline Rule 23 and the procedures adopted by the Disciplinary Commission are violative of Respondent's constitutional rights as hereinbefore set forth.

(18) In Count IX of the information and indictment, Respondent is charged with the crime of slander as defined by Burns' Indiana Statutes, Volume 4, Part 2, Section 10-3203. Admission and Disciplinary Rule 23 and the procedures adopted by the Disciplinary Commission against Respondent are unconstitutional as constituting a denial of Respondent's rights to be charged and tried for the alleged offense in the Lake Superior Court, Criminal Division, subject to the privileges and immunities of any other citizen and/or resident of the State of Indiana charged with the crime of slander.

(19) In Count X, Respondent is charged with the crime of slander on March 24, 1974 in the Lake Superior Court, Room No. One, in Hammond, Indiana



disbarred as a punishment for contempt ex parte Smith (1867) 28 Ind. 47. Respondent is entitled to be charged and tried for the offense with the right of appeal as provided for in Burns' Title 34, Section 34-4-7-7. Admission and Disciplinary Rule 23 and the procedures adopted thereunder are unconstitutional in that they deny Respondent his right to due process of law and equal protection of the law. Like any other citizen, he is entitled to be charged with the offense and tried in accordance with the procedures specified by the legislature.

(22) In Counts XIII and XIV of the indictment and/or information, Respondent is charged with criminal libel as defined in Burns' Indiana Statutes, Volume 4, Part 2, Section 10-3201. In addition, the letters of July 1, 1974 and August 8, 1974 as described may constitute the offense of indirect contempt as defined by Burns' Title 34, Section 34-4-7-5. The punishment for contempt of Court is set forth in Burns' Indiana Statutes, Title 34, Section 34-4-7-6. Procedures to be followed are set forth in Burns', Title 34, Sections 34-4-7-8, 34-4-7-9, 34-4-8-1, and 34-4-8-2. Admission and Discipline Rule 23 and the procedures adopted thereunder are unconstitutional in that Respondent is denied due process and equal protection of the laws. He is entitled to be

during a hearing in the case of Van Horne vs. Squarcy, Lake Superior Court No. 174-292. Admission and Discipline Rule 23 and the procedures adopted by the Disciplinary Commission against your Respondent deny him of the right to be charged with the crime of criminal slander as defined in Burns' Indiana Statutes 10-3202, supra, and tried on the charge in the Lake Superior Court, Criminal Division, as any other citizen and resident of Lake County charged with such a crime.

(20) In Count XI, Respondent is charged with the criminal offense of disorderly conduct, at an undescribed time, in an undescribed place, as defined by Burns' Indiana Statutes, Volume 4, Part 2, Section 10-1510. Morris v. State 227 Ind. 630, 88 N.E.2d 328. Admission and Disciplinary Rule 23 and procedures adopted thereunder constitute a denial of Respondent's right to due process of law and deny him equal protection of the law by affording him the right to be indicted in the county where the disorderly conduct occurred and to be tried therein with the privileges and immunities specified in paragraph (12), supra.

(21) In Count XII, Respondent is charged with indirect contempt as defined by Burns' Title 34, Section 34-4-7-5. Zuver v. State (1919) 188 Ind. 660, 121 N.E. 828. Section 34-4-7-6 privides for the punishment. Respondent cannot be summarily



proceeded against in the Lake Superior Court, Criminal Division, by affidavit and/or indictment and to be tried under the privileges and immunities afforded all other citizens in Lake County.

(23) In Count XV of the information and/or indictment, Respondent is charged with the crime of slander as defined in Burns' Indiana Statutes, Volume 4, Part 2, Section 10-3203. Further, the allegations, if true, would or might constitute criminal contempt of Court as defined by Burns' Indiana Statutes, Title 34, Section 34-4-7-1. Admission and Discipline Rule 23 and the procedures adopted thereunder are unconstitutional in that Respondent is denied due process and equal protection of the laws. He is entitled, as of right, to be proceeded against in the Lake County Superior Court, Criminal Division, or in the Lake Circuit Court and to be given the privileges and immunities afforded all other citizens charged with the offense. Necessarily, he denies making any false accusations against Special Judge John Stanish in the Hammond City Court as alleged.

(24) In Count XVIII of the information and/or indictment, Respondent is charged with statements made on October 12, 1973, which are alleged to constitute a direct contempt of court as defined by Burns' Indiana Statutes, Title 34, Sections 34-4-7-1 and 34-4-7-6. Respondent is and was

entitled to be arraigned for direct contempt as provided for in Burns' Indiana Statutes, Title 34, Section 34-4-7-7. Admission and Discipline Rule 23 and the procedures adopted by the Disciplinary Commission thereunder are unconstitutional in that they deny Respondent his right to be charged with direct contempt in the Jasper Circuit Court and to defend himself with the right of an appeal, in the manner and means set forth in the statute.

WHEREFORE, Respondent prays that, upon hearing, a finding of not guilty be entered on the Verified Complaint for Disciplinary Action, or in the alternative, Findings of Fact, Conclusions of Law and a Judgment in favor of Respondent and against the Disciplinary Commission be entered.

/s/ Richard A. Miller
Richard A. Miller, Esq.

/s/ George E. Brown, Jr.
George E. Brown, Jr., Esq.
Attorneys for Respondent.



EXCERPTS FROM THE
VERIFIED MOTION FOR RELIEF
FROM AND RECONSIDERATION
OF THE DISCIPLINARY ACTION
ENTERED ON NOVEMBER 29, 1978,
SERVED AND FILED ON FEBRUARY 10, 1979

(4) Respondent alleges that he has been denied due process of law as guaranteed him under the 1st and 14th Amendments to the United States Constitution by the Disciplinary Action of November 29, 1978, in each of the following particulars:

(a) The twenty-seven (27) page per curiam "Disciplinary Action" was entered without notice or hearing and in direct violation of the provisions of A & D Rule 23, Section 15. Supreme Court Review, P (c), reading in pertinent part as follows:

"(c) In the event that this Court grants a petition under this Section 15, briefs may be filed and oral ar-

guments heard, as the Court shall determine. Such briefs need not conform to the rules of this Court. Upon a review the Court shall determine whether the findings and recommendations of the hearing officer or officers are supported by sufficient evidence and shall enter its judgment, with or without opinion as the Court shall determine."

Over an extended period of time, from November 9, 1976, when the Hearing Officer, Judge Bruce W. Douglas, entered Findings of Fact, Conclusions of Law and Recommendations in Respondent's favor, through and including January , 1978, Respondent prepared, served and filed extensive objections, supported by briefs, to the petitions of complainant Saul I. Ruman and the Disciplinary Commission for a review of the hearing officer's findings. Neither the objections nor the petitions for review were ruled upon, and the Court had not granted the petitions for review under Section 15, when the twenty-seven (27) page Disciplinary



Action was filed.

(b) The hearing officer, after extensive hearings, determined that misconduct had not been proven by a preponderance of the evidence with regard to a single one of the XX counts of the amended complaint filed on June 25, 1975. ("(f) Within thirty (30) days after the conclusion of the hearing, the hearing officers shall determine whether misconduct has been proven by a preponderance of the evidence and shall submit to the Supreme Court written findings of fact. Recommendations concerning the disposition of the case may be made by the hearing officer in his discretion. A copy of said findings and any recommendations shall be served by the hearing officer on the respondent and the Executive Secretary of the disciplinary commission at the time of filing same with the Supreme

Court." A & D Rule 23, Section 14, ℙ [f]) Neither the complainant, Saul I. Ruman, nor the Disciplinary Commission questioned the sufficiency of the evidence to support the findings of fact as required by the most recent amendment of Section 15. Supreme Court Review, ℙ (c), reading in pertinent part as follows:

> "(c) In the event a party does not concur in a factual finding made by the hearing officer and asserts error in such finding in the petition for review, such party shall file with the petition for review a record of all the evidence before the hearing officer relating to this factual issue. Within thirty (30) days of the filing of the transcript, opposing parties may file such additional transcript as deemed necessary to resolve the factual issue so raised in the petition for review. Any transcript filed must be settled, signed and certified as true and correct by the hearing officer. . ."

As admitted on the face of the Disciplinary Action, the Court ignored the findings of fact, as authorized by the provisions of Section 15, and relied upon



recitations of evidence from a brief (or briefs) prepared in Hammond, Indiana, after the record and exhibits filed by Judge Bruce W. Douglas on November 9, 1976, were delivered by the commission's attorney, David Hughes, to the complainant, Saul I. Ruman, for the use of Hammond attorneys Harold Abrahamson and Kenneth D. Reed, who were the major fabricators of the XX count amended disciplinary complaint.

(c) Respondent has been denied due process of law under the 14th Amendment in that the Court has taken away his means of earning a living without having accorded him the benefit of a judicial determination of the facts by a judge who had conducted the trial, weighed the testimony, observed the witnesses before him and determined what has been proven and what has not been proven. It ap-

pears on the face of the Disciplinary Action that the Court has undertaken to make its own factual determinations without having seen the witnesses, heard their testimony and weighed the evidence in the manner provided for by the law.

(d) Respondent has been denied due process of law and equal protection of the law in that the Court has failed and refused to follow all of its prior decisions on the subject of necessity of giving full credence to the findings of its hearing officer on disputed questions of fact. In no instance since A & D Rule 23 was adopted has the Court ignored the findings of the hearing officer appointed by it to hear and determine the facts. The Court, in the present instance, has ignored the findings of the hearing officer and has, erroneously, entered findings of its own without a judicial de-



termination of the facts.

(e) The Court, in entering its per curiam Disciplinary Action on November 29, 1978, has ignored all of the pleadings and papers on file in the cause, has ignored the court reporter's transcript of the proceedings in open court during the extensive hearings that commenced on September 29, 1975, and were concluded on December 3, 1975, has ignored the thousands upon thousands of pages of documentary evidence, and has filed its twenty-seven page Disciplinary Action without any consideration of the extensive record filed by Honorable Bruce W. Douglas in support of the Findings of Fact.

(5) Respondent has been denied due process of law in that he has not had the benefit of a fair and impartial tribunal. The complainant, Hammond Attorney Saul I. Ruman, is and has been

since November 19, 1975, the attorney for Judge Alfred J. Pivarnik in a $600,000.00 libel and slander suit filed in the Lake Superior Court, Room No. Four, Gary, under cause no. 475-2328, entitled Alfred J. Pivarnik, et al. vs. Alex Bottos, Elmer L. Jacobsen, Owen W. Crumpacker, Sherman Skolnick and David Glenn Hoffman. On August 21, 1978, Respondent, by his attorney, Richard A. Miller, and as attorney for Elmer L. Jacobsen, former Director of the Northwest Indiana Crime Commission, had filed motions requiring Judge Alfred J. Pivarnik to produce his income tax returns and other financial data. Further, complainant Saul I. Ruman had agreed to produce Alfred J. Pivarnik for discovery deposition purposes in preparation for the trial of the libel and slander suit assigned for trial before a jury on April



23, 1979. Copies of the pertinent pleadings and motion to produce are attached hereto and made a part hereof as Exhibits "C," "D," "E," and "F." In addition, Respondent, on November 29, 1978, was the attorney of record in a civil rights action pending in the United States District Court for the Northern District of Indiana, Hammond Division, under cause no. H77-270, in a proceedings captioned Elmer L. Jacobsen vs. Alfred J. Pivarnik, et al., a copy of the complaint in said action being attached hereto and made a part hereof as Exhibit "G." Further, on November 29, 1978, Respondent was the attorney of record for Elmer L. Jacobsen in an appeal from a decision entered by Judge Alfred J. Pivarnik as Judge of the Porter Superior Court, on August 6, 1975, in a criminal contempt case. Respondent's client, Elmer L. Jacobsen, was

found guilty of criminal contempt and sentenced to thirty-two (32) days in the Porter County Jail without bond. Judge Pivarnik's attorney, Saul I. Ruman, and his associate, Richard J. Lesniak, a law partner of Rudolph Val Dawson, Chairman of the Disciplinary Commission, had intervened on July 21, 1975, allegedly to assist Judge Pivarnik in the orderly disposition of the proceedings. The Court of Appeals of Indiana, on January 15, 1979, rendered a split decision with a majority opinion by George B. Hoffman, Jr., Judge, upholding the criminal contempt convictions. (Elmer L. Jacobsen, Defendant-Appellant vs. State of Indiana, Plaintiff-Appellee, Indiana Court of Appeals, Third District, Cause No. 3-1175 A 247) Prior to May 11, 1977, when Judge Alfred J. Pivarnik was sworn in as Judge of the Supreme Court of Indiana by Gover-



nor Otis R. Bowen, Respondent's client, Elmer L. Jacobsen, had filed a complaint with the Judicial Qualifications Commission of Indiana, seeking to obtain the removal of Judge Pivarnik as Judge of the Porter Circuit Court (and ex-officio judge of the Porter Superior Court) for various acts of alleged misconduct. Among other acts of judicial misfeasance charged, was the issuance of press releases by Judge Alfred J. Pivarnik and his attorney, Saul I. Ruman, in connection with the proposed filing of a libel and slander suit in his own court at Valparaiso, against Reverend ROGER Voegtlin of the Fairhaven Baptist Church, Reverend James Vineyard of the First Baptist Church of Hammond and the First Baptist Church of Hammond, seeking damages in the amount of $1,500,000.00 for alleged conspiracy to libel and slander said

Judge Pivarnik. Complainant Saul I. Ruman has prosecuted the various legal actions for and on behalf of Judge Alfred J. Pivarnik without cost or expense to either the Judge or his family. In the proceedings instituted against Reverend Roger Voegtlin, et al., presently pending in the Jasper Circuit Court at Rensselaer, Judge Alfred J. Pivarnik and his family contend that Respondent Owen W. Crumpacker, his former client, Elmer L. Jacobsen, Alex Bottos, Sherman H. Skolnick and David Glenn Hoffman conspired and confederated with Reverend Voegtlin, Reverend Vineyard and the First Baptist Church of Hammond to maliciously libel and defame Judge Pivarnik and his family. All of these facts and circumstances were fully known to the Court when the Disciplinary Action was filed on November 29, 1978.



(6) Respondent respectfully represents that the Disciplinary Action is replete with material errors of fact which would have been fully demonstrated by Respondent and his counsel had they been given a hearing before the Court. For example, the Court misconstrues and misstates the facts alleged by way of the affirmative defenses and the volumes of documentary evidence, which the Court has not looked at, supporting each and every allegation of the affirmative defenses. For the purpose of establishing, generally, the material errors which the Court has ignored, Respondent has attached representative excerpts from the record, as Exhibits "H" and "I." Contrary to the statements in the Disciplinary Action, the authors of the Disciplinary Commission's brief have ignored not only the testimony of the witnesses on the

issues presented, but have failed to either include or refer to the documentary evidence offered, examined and received in evidence by the hearing officer.

Supreme Court, U. S.
FILED
NOV 13 1979
MICHAEL RODAK, JR., CLERK

79-403

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

## No. 79-1127

**OWEN W. CRUMPACKER,**

*Petitioner,*

vs.

**INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT,**

*Respondents.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Indiana**

## RESPONDENT SAUL I. RUMAN'S APPENDIX IN SUPPORT OF BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SAUL I. RUMAN
Attorney at Law
5261 Hohman Avenue
Hammond, Indiana 46320
*Respondent Pro Se*

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

## TABLE OF CONTENTS


PAGE

Supreme Court of Indiana Order Adopting Rules of Procedure ..... A1

Indiana Rules for Admission to the Bar and the Discipline of Attorneys ..... A3

Findings of Fact, Conclusions of Law, Judgment Order and Decree — *Bryant et al. v. Lake County Trust Company, an Indiana Corporation, in Its Own Right and as Trustee Under Trust 1653, et al.*, Lake Circuit Court No. C 71-1384 ..... A29

Order in *State of Indiana v. Kushner, et al.*, Cause No. 36721-C, LaPorte Circuit Court, dated March 24, 1975 ..... A43

Order in *State of Indiana v. Kushner, et al.*, Cause No. 36721-C, LaPorte Circuit Court, dated April 29, 1975 ..... A45

Opinion — *In the Matter of Woodmar Realty Company, a Corporation, Debtor - Woodmar Realty Company v. McLean, et al.*, U.S.C.A. 7, No. 13215, 294 F.2d 785 ..... A47

Opinion — *In re: Owen W. Crumpacker*, Supreme Court of Indiana, No. 29285, 130 N.E.2d 775 ..... A67

Opinion — *Mancuso v. Indiana Harbor Belt R.R.*, U.S.C.A. 7, No. 77-1466, 568 F.2d 553 ..... A71

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

---

## No. 79-1127

---

**OWEN W. CRUMPACKER,**

*Petitioner,*

VS.

**INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT,**

*Respondents.*

---

**On Petition For Writ Of Certiorari To The Supreme Court Of Indiana**

---

# RESPONDENT SAUL I. RUMAN'S APPENDIX IN SUPPORT OF BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

---

# SUPREME COURT OF INDIANA ORDER ADOPTING RULES OF PROCEDURE

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF THE
ADOPTION OF
RULES OF THE COURT

WHEREAS, this Court has inherent power to make rules of procedure and also has such power pursuant to the authority granted by the General Assembly of Indiana by Acts of 1937, ch. 91, § 1, p. 459,

AND WHEREAS, this Court received a proposed final draft of new Rules of Civil Procedure in October of 1968 from the Civil Code Study Commission of Indiana,

AND WHEREAS, this Court thereupon referred this proposed final draft of new Rules of Civil Procedure to the Advisory Committee of this Court on Revision of Rules of Procedure and Practice for consideration and study and to receive suggestions from members of the Bar and legal community with reference to the new Proposed Rules,

AND WHEREAS, the Committee of this Court on Revision of Rules of Procedure and Practice did report to this Court that it had completed its study of the new Proposed Rules and recommended that the Court adopt said Rules with some modification,

AND WHEREAS, this Court immediately commenced its own study of the new Proposed Rules which study is now completed,

AND WHEREAS, during the period of study by the Court, the Indiana General Assembly enacted House Enrolled Act 1733 adopting the same new Proposed Rules with modification, said Act to become effective on and after January 1, 1970, which Act contained the following section

recognizing the inherent power of this Court to amend the procedural rules contained in the enactment:

> "SEC. 2. The General Assembly of the State of Indiana affirms the inherent power of the Supreme Court of Indiana to adopt, amend and rescind rules of Court affecting matters of procedure, and the General Assembly reaffirms the power given to the Supreme Court to adopt, amend and rescind rules of Court, including these rules of Court herein adopted, as set forth by the Acts of the General Assembly of 1937 at Chapter 91, Section 1."

AND WHEREAS, this Court has made additional modifications of the procedural rules contained in the said enactment, NOW THEREFORE,

IT IS ORDERED AND DECREED THAT

1. The compilation of procedural rules, appended to this Order, are hereby adopted as the Rules of Procedure of the Indiana Supreme Court, such rules to become effective immediately following midnight of the 31st day of December, 1969; and

2. The current rules of the Supreme Court of Indiana shall remain in effect until midnight on the 31st day of December, 1969, when they shall be abrogated and superceded by the appended rules; and

3. Section 3 of the enactment of the 1969 General Assembly of Indiana, entitled House Enrolled Act No. 1733, is set out herein in full and appended to this Order for use in determining which statutes have been specifically repealed by said enactment, which section this Court does not intend to affect in any manner by this Order; and

4. The rules appended to this Order shall supercede all procedural statutes in conflict therewith.

It is so ordered this 29 day of July, 1969.

ROGER O. DeBRULER
CHIEF JUSTICE



# INDIANA RULES FOR ADMISSION TO THE BAR AND THE DISCIPLINE OF ATTORNEYS

*Table of Rules*

*Rule*


1. The Bar of Indiana.
2. Registration.
2.1 Law Students.
3. Admission of Attorneys.
4. Roll of Attorneys.
5. [Vacated.]
6. Admission on Foreign License.
7. Certificates.
8. [Vacated.]
9. State Board of Law Examiners.
10. Expenses and Compensation of Members of Board.
11. Forms.
12. Committee on Character and Fitness.
13. Requirements for Admission to Examination.
14. Review.
15. Applications for Examination.
16. Fees for Examination.
17. Examinations.
18. Report on Examinations.
19. [Vacated.]
20. Re-Examinations.
21. Admissions.
22. Oath of Attorneys.
23. Disciplinary Commission and Proceedings.
24. Rules Governing the Unauthorized Practice of Law.
25. Complaints Against Justices and Judges.
26. Group Legal Service Plans.
27. Professional Corporations.
28. Indiana Judicial Council on Legal Education and Competence at the Bar.

## Admission and Discipline Rule 1

### THE BAR OF INDIANA

The bar of this state shall consist of all attorneys in good standing who, prior to July 1, 1931, were duly admitted to practice law by the circuit courts of this state, and all attorneys in good standing who, subsequently thereto, have been or hereafter shall be admitted to practice by this court.

## Admission and Discipline Rule 23

### DISCIPLINARY COMMISSION AND PROCEEDINGS

**Section 1. General Principles**

Each person granted the privilege to practice law in this State has the obligation to conduct himself at all times in a manner consistent with the trust and confidence reposed in him by this Court and in a manner consistent with his duties and responsibilities as an officer or judge of the courts of this State. This Court has exclusive jurisdiction of all cases in which an attorney who is admitted to the bar of this Court or who practices law in this State (hereinafter referred to as "attorney") is charged with misconduct. The procedures hereinafter set forth shall be employed and construed to protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.

The term "attorney" as used in this rule shall include, in addition to all persons admitted to the bar of this Court, or who practice law in this State, any and all judges of any and all courts of this State now in existence or hereafter created or established.



**Section 2. Grounds for Discipline or Suspension**

(a) Any conduct that violates the Code of Professional Responsibility or the Code of Judicial Conduct and Ethics heretofore adopted or as hereafter modified by this Court or any standards or rules of legal and judicial ethics or professional responsibility hereafter adopted by this Court shall constitute grounds for discipline.

(b) If an attorney admitted to practice in this State who is also admitted to practice in any other state should be disbarred or suspended by the proper authority of such other state, such disbarment or suspension shall constitute sufficient grounds for disbarment or suspension of said attorney in this State.

(c) Any attorney who becomes disabled by reason of physical or mental illness or infirmity or because of the use of or addiction to intoxicants or drugs shall be subject to suspension by reason of such disability.

**Section 3. Type of Discipline and Suspension**

(a) One of the following types of discipline may be imposed upon any attorney found guilty of misconduct: permanent disbarment from the practice of law subject to reinstatement as hereinafter provided; suspension for a definite or an indefinite period from the practice of law subject to reinstatement as hereinafter provided; suspension for a definite period, not to exceed six months, from the practice of law with provision for automatic reinstatement upon such conditions as the Court shall specify in the order of suspension; a public reprimand; or a private reprimand.

(b) Any attorney found disabled by reason of physical or mental illness or infirmity or by use of or addiction to any intoxicants or drugs shall be suspended for the duration of such disability.

(c) In cases of misconduct or disability, this Court may, in lieu of permanent disbarment or suspension place a law-

yer on probation and permit him to continue practicing law if in its opinion such action is appropriate and desirable. In such event, the lawyer will be subject to such conditions, limitations and restrictions as this Court may see fit to impose, and upon a violation of such conditions, restrictions or limitations, said attorney may be suspended or disbarred.

(d) Notice of permanent disbarment, suspension or public reprimand shall be communicated to the parties to the proceeding, the Clerk of this Court, the Clerk of each of the Federal District Courts in this State, the Clerk of the Court and Bar Association of each county in which the attorney maintains an office, the Clerk of the Court and Bar Association of each contiguous county, a newspaper of general circulation in each county in which the attorney maintains an office, the official publication of the Indiana State Bar Association, and the American Bar Association. Notice of private reprimand shall be communicated to the parties to the proceeding and the Clerk of this Court. In cases where probation is imposed by this Court, the Clerk shall notify such persons as the Court may direct of the action taken and of the restriction, conditions or limitations.

**Section 4. Reinstatement**

(a) No person whose privilege to practice law has been suspended shall be eligible for reinstatement to practice law in this State unless he establishes by clear and convincing evidence before the disciplinary commission of this Court that:

(1) He desires in good faith to obtain restoration of his privilege to practice law;

(2) The term of suspension prescribed in the order of suspension has elapsed or five (5) years have elapsed since the suspension;

(3) He has not practiced law in this State or attempted to do so since he was disciplined;



(4) He has complied fully with the terms of the order for discipline;

(5) His attitude towards the misconduct for which he was disciplined is one of genuine remorse;

(6) His conduct since the discipline was imposed has been exemplary and above reproach;

(7) He has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and will conduct himself in conformity with such standards;

(8) He can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the Courts;

(9) The disability has been removed, if the discipline was imposed by reason of physical or mental illness or infirmity, or for use of or addiction to intoxicants or drugs.

(b) Whenever a person is suspended for a definite period not to exceed six (6) months with provision for automatic reinstatement, the commission shall have the right to file written objections to such automatic reinstatement, setting forth its reasons for such objections, which shall be limited to:

1. failure to comply with the terms of the order;
2. pendency of other complaints;
3. failure to comply with the terms of Section 27, infra.

Such objections must be filed with the Court at least ten (10) days prior to the expiration of such period of suspension and a copy of such objections shall be mailed to the suspended attorney. Upon the timely filing of such objections, the Court shall conduct a hearing on such objections and upon the question of reinstatement of such attorney; and the Court, after such hearing, shall determine whether or not such suspended attorney shall be reinstated.

If the Court determines that such attorney should not then be reinstated, the Court shall, in its order, specify when such attorney shall be eligible to apply for reinstatement pursuant to subsection (a) of this section.

**Section 5. Role of Bar Association**

(a) Bar associations in this State shall not conduct proceedings for the imposition of discipline as defined in this rule. Such bar associations shall take all necessary action to resolve attorney-client disputes which do not involve claims of misconduct upon request by the Disciplinary Commission. Such bar associations and the members of the bar shall also assist the Disciplinary Commission in the investigation and prosecution of claims of misconduct upon request by the Disciplinary Commission.

(b) Bar associations of this State may take reasonable action to resolve attorney-client disputes where the dispute is limited to the amount of compensation being charged by the attorney independently of any request by the Disciplinary Commission and without referring such dispute to the Disciplinary Commission. Such action by the bar associations may include but shall not be limited to mediation or arbitration of the amounts to be charged for an attorneys' services.

In cases where a bar association attempts to resolve an attorney-client dispute as to compensation charged for the attorney's services, any person dissatisfied with such attempt at resolution shall have a right to file a formal complaint with the Disciplinary Commission if the amount charged by the attorney is so completely excessive in relation to the services performed and to the usual considerations taken into account in determining an attorney's charges as to constitute misconduct in itself, or if other misconduct on the part of the attorney is claimed.

(c) A bar association of this State shall be permitted to prepare and file a claim of misconduct with the Disciplinary Commission under the following circumstances:



(1) The decision to prepare and file such claim of misconduct shall be taken at a regular or special meeting of said bar association after notice has been given to the members of such association

or

Where such association has a governing Board of Managers or Board of Directors, such decision may be taken at a regular or special meeting of such Board of Managers or Board of Directors after notice to such managers or directors.

(2) A quorum of the members of such association, or of the Board of Managers or Board of Directors thereof shall be in attendance at the meeting.

(3) The decision to file a claim of misconduct shall be made by a roll call vote of the members, managers or directors in attendance at such meeting, with the vote of each member present being recorded.

**Section 6. Composition of Supreme Court Disciplinary Commission**

(a) A disciplinary commission to be known as the "Disciplinary Commission of the Supreme Court of Indiana" (hereinafter referred to as "the commission") is hereby created and shall have the powers and duties hereinafter set forth. Five of the members of the commission shall be members of the bar of this State, and the remaining members may be non-lawyers. Said members shall be appointed as follows:

(b) The disciplinary commission shall consist of seven (7) members appointed by the Supreme Court of Indiana. A reasonable effort shall be made to provide a geographical representation of the State. The term of each member shall be for five (5) years. Provided, however, upon the effective date of this rule, two (2) members shall be appointed for a term of two (2) years, two (2) members for a term of three (3) years, two (2) members for a term of four (4) years and one (1) member for a term of five (5)

years. Thereafter, the terms of each new appointee shall be for five (5) years, or in the case of an appointee to fill the vacancy of an unexpired term, until the end of such unexpired term. Any member may be terminated by the Court for a good cause.

**Section 7. Organization of the Disciplinary Commission**

(a) The Commission shall annually elect from among its membership a Chairman who shall preside at all meetings, a Vice Chairman who shall preside in the absence of the Chairman, and a Secretary who shall keep the minutes of the meetings of the Commission.

(b) Four Commissioners shall constitute a quorum of the Commission and the Commission shall act by a vote of a majority of the Commissioners present.

(c) The Commission shall meet monthly at a time and place designated by the Chairman who may also convene special meetings of the Commission, in his discretion. The members of the Commission should be entitled to a per diem of twenty-five [$25.00] dollars a meeting plus mileage if they live outside Marion County.

**Section 8. Powers and Duties of the Disciplinary Commission**

In addition to the powers and duties set forth in this Rule, the Commission shall have the power and duty to:

(a) appoint with the approval of the Supreme Court an Executive Secretary of the Commission who shall be a member of the Bar of this State and who shall serve at the pleasure of the Commission;

(b) prepare and furnish a form of request for investigation to each person who claims that an attorney is guilty of misconduct and to each Bar Association in this State for distribution to such persons;

(c) supervise the investigation of claims of misconduct;



(d) issue subpoenas, including subpoenas duces tecum; the failure to obey such subpoena shall be punished as contempt of this Court;

(e) do all things necessary and proper to carry out its powers and duties under these Rules;

(f) the right to bring an action in the Supreme Court to enjoin or restrain the unauthorized practice of law.

**Section 9. Powers and Duties of the Executive Secretary**

In addition to the powers and duties set forth in this Rule, the Executive Secretary shall have the power and duty to:

(a) administer the Commission's work;

(b) appoint, with the approval of the Commission, such staff as may be necessary to assist the Commission to carry out its powers and duties under this Rule;

(c) supervise and direct the work of the Commission's staff;

(d) appoint and assign duties to investigators;

(e) supervise the maintenance of the Commission's records;

(f) issue subpoenas in the name of the Commission, including subpoenas duces tecum. The failure to obey such a subpoena shall be punished as a contempt of this Court;

(g) enforce the collection of the registration fee provided in Section 15 against delinquent members of the Bar; and

(h) do all things necessary and proper to carry out his duties and powers under this Rule.

**Section 10. Investigatory Procedures**

(a) Upon receipt of a written, verified claim of misconduct (hereinafter referred to as "the grievance"), from a

member of the public, a member of this bar, a member of the commission, or a Bar Association and completion of such preliminary investigation as he deems appropriate, the Executive Secretary shall:

(1) Dismiss the claim, with the approval of the commission, if he determines that it raises no substantial question of misconduct; or

(2) If he determines that it does raise a substantial question of misconduct, send a copy of the grievance by certified mail to the attorney against whom the grievance is filed (hereinafter referred to as "the respondent") and shall request a written response within twenty (20) days after the respondent receives a copy of the grievance. In the event of a dismissal as provided herein, the person filing the grievance and the respondent shall be given written notice of the Executive Secretary's determination. In the event of a determination that a substantial question exists, the matter shall proceed to (b) hereinafter.

(b) Thereafter, after notice to the respondent, if the Executive Secretary, upon consideration of the grievance, the preliminary investigation and any response from the respondent, determines there is a reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be docketed and investigated. If he determines that no such reasonable cause exists, the grievance shall be dismissed with the approval of the commission. In either event, the person filing the grievance (hereinafter referred to as "the complainant") and the respondent shall be given written notice of the Executive Secretary's determination.

(c) If the grievance is docketed, for investigation, the Executive Secretary shall conduct an investigation of the grievance. Upon completion of the investigation the Executive Secretary shall promptly make a report of the investigation and his recommendations to the commission at its next meeting.

(d) In conducting an investigation of any grievance, or in considering the same, the Executive Secretary or the



commission shall not be limited to an investigation or consideration of only matters set forth in the grievance, but shall be permitted to inquire into the professional conduct of the attorney generally. In the event that the Executive Secretary or the commission should consider any charges of misconduct against an attorney not contained in the grievance, the Executive Secretary shall notify the attorney of the additional charges under consideration, and the attorney shall have the opportunity to make a written response to the additional charges under consideration within twenty (20) days after the receipt of such notification.

Any additional charges of misconduct against an attorney, after such notice has been given by the Executive Secretary and the attorney has had an opportunity to reply thereto, may be the subject of a count of any complaint filed against the attorney pursuant to Sections 11 and 12 of this rule.

**Section 11. Pre-Hearing Procedures**

(a) The members of the Commission shall consider and make a determination of the report and recommendations of the Executive Secretary not later than the meeting following the submission of the report. If the Commission determines that there is not reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be dismissed, and the complainant and the respondent shall be given written notice of the Commission's determination.

(b) If after such consideration, the Commission determines there is a reasonable cause to believe respondent is guilty of misconduct, which would warrant disciplinary action, it shall file with the Clerk a complaint as provided in Section 12 and it shall so report to the Supreme Court, who shall thereupon appoint a hearing officer or officers, not to exceed three [3] in number, who shall be members of the Bar of this Court, none of whom shall be members of the Disciplinary Commission, to hear and determine said charges.

(c) If after such consideration aforesaid, the Commission determines there is reasonable cause to believe respondent is guilty of misconduct which, if proven, would warrant suspension pending prosecution, it shall include a motion to that effect in the aforesaid report to this Court, and this Court shall so advise the hearing officer or officers.

(d) At any time prior to the filing of a complaint with the Clerk, or within thirty (30) days thereafter, the parties (commission and respondent) may conditionally agree upon the discipline to be imposed, in which event they shall jointly submit to the Court Administrator a statement of circumstances which shall contain the proposed charges, the facts agreed to, the facts in dispute, the evidence the parties separately believe would be adduced in a hearing, and the discipline with which the parties are in conditional agreement. Said statement may also contain any other information that the parties deem relevant, other than statements by witnesses attesting to the character or reputation of the respondent, which statements may not be filed.

Upon such submission, the Court will consider the same and (1) enter an order for the discipline conditionally agreed to or (2) submit to the parties a proposed order for such discipline as the Court shall deem appropriate, or (3) notify the parties that it declines to indicate any disposition.

In the event an order is entered as set forth under (1) above, such order shall be a final disposition of the matter. In the event the Court submits a proposed order as set forth under (2) above, and the parties shall desire to agree to such disposition, they shall, within sixty (60) days following the submission of such proposed order, file with the Clerk a complaint, as provided in paragraph (d) of this Section 11 together with a statement of agreement, verified by the respondent and by a member of the commission or the executive secretary thereof. Said statement of agreement shall reflect the prior conditional agreement, the prior action of the Court thereon and the agreement of the parties thereto. Upon such filing, the Court shall



enter its order accordingly, which order shall be a final disposition of the matter. In the event the parties do not desire to agree to such proposed order or in the event the Court proceeds as set forth under (3) above, the parties shall proceed as if no conditional agreement had been filed.

It is the intent of this rule to encourage appropriate agreed dispositions of disciplinary matters. A conditional agreement shall not be admitted into evidence at any hearing of the matter.

**Section 12. Prosecution Grievances**

(a) In the event the commission determines that the misconduct, if proven, would warrant disciplinary action, the Executive Secretary shall prepare a verified complaint which sets forth the misconduct with which the respondent is charged and shall prosecute the case.

(b) The complaint shall be entitled "In the Matter of," naming the respondent. Six (6) copies shall be filed with this Court. The complaint may be verified on the basis of information and belief.

(c) Upon the filing of such complaint, a copy of the complaint shall be served upon the respondent by delivering a copy of the complaint to him personally or by sending a copy of the complaint by registered or certified mail with return receipt requested and returned showing the receipt of the letter.

In the event the personal service or service by registered or certified mail cannot be obtained upon any respondent attorney, said complaint shall be served on the Clerk of this Court as set forth below.

(d) Each attorney admitted to practice law in this State shall be deemed to have appointed the Clerk of this Court as his or her agent to receive service of any and all papers, processes or notices which may be called for by any provision of this rule. Such papers, process or notice may be served by filing the same with the Clerk of this Court as

the agent for said attorney, together with an affidavit setting forth the facts necessitating this method of service. Upon receipt of such papers, process or notice together with such affidavit, the Clerk of this Court shall immediately mail such papers, process or notice to such attorney at the attorney's address as shown upon the records of the Clerk of this Court, and the Clerk shall make an affidavit showing the mailing of such papers, process or notice to said attorney. Upon the completion of this procedure, said attorney shall be deemed to have been served with such papers, process or notice.

**Section 13. Hearing Officers**

In addition to the powers and duties set forth in the rule, hearing officers shall have the power and duty to:

(a) Conduct a hearing on a complaint of misconduct within sixty (60) days after the hearing officer is appointed and has qualified;

(b) Administer oaths to witnesses;

(c) Receive evidence and make written findings of fact and recommendations to the Court; and

(d) Do all things necessary and proper to carry out their responsibilities under this rule.

**Section 14. Proceedings Before the Hearing Officer**

(a) The rules of pleading and practice in civil cases shall not apply. No motion to dismiss or dilatory motions shall be entertained. The case shall be heard on the complaint and an answer which may be filed by the respondent within thirty (30) days after notice of the filing of the complaint. An answer, if filed, may assert any legal defense. If the respondent shall elect to file an answer, he shall file six (6) copies with this Court. An answer need not be filed, in which case the complaint shall be taken as denied. A respondent may on a showing of good cause petition for a change of hearing officer within ten (10) days after the appointment of such hearing officer.



(b) The complainant and the respondent shall be given not less than fifteen (15) days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him and to produce and require the production of evidence and witnesses in his own behalf at the hearing, as in civil proceedings.

Either the Executive Secretary or the respondent may file with the hearing officer a motion to take depositions or a motion to produce certain documents or records, setting forth the reasons why such depositions should be taken or such records should be produced. The hearing officer may permit the taking of such depositions or may require the production of documents or records under such terms and conditions as he may deem proper. Such terms and conditions shall, as nearly as practicable, follow the Indiana Rules of Civil Procedure pertaining to discovery proceedings.

(c) At the discretion of the hearing officer, or upon the request of either party, a pre-hearing conference may be ordered for the purpose of obtaining admissions, narrowing the issues presented by the pleadings, requiring an exchange of the names and addresses of prospective witnesses and the general nature of their expected testimony, considering the necessity or desirability of amendments to the verified complaint and answer thereto, and such other matters as may aid in the disposition of the action.

(d) The complainant and the respondent shall be given not less than fifteen (15) days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him and to produce at the hearing and require production of evidence and witnesses in his own behalf at the hearing, as in civil proceedings. All subpoenas or other proceedings and all notices connected with processing of such com-

plaint shall be issued only under the direction of the hearing officer or hearing officers, and no other court or judicial officer of this State shall have jurisdiction to issue any orders or processes in connection with a disciplinary complaint.

(e) The proceedings may be summary in form and shall be without the intervention of a jury and shall be reported.

(f) Within thirty (30) days after the conclusion of the hearing, the hearing officers shall determine whether misconduct has been proven by a preponderance of the evidence and shall submit to the Supreme Court written findings of fact. Recommendations concerning the disposition of the case may be made by the hearing officer in his discretion. A copy of said findings and any recommendations shall be served by the hearing officer on the respondent and the Executive Secretary of the disciplinary commission at the time of filing same with the Supreme Court.

(g) If there has been a determination of reasonable cause as set forth under 11(c), and if the complaint states facts constituting such reasonable cause, the hearing officer or officers may, upon motion of the disciplinary commission, issue a rule against the respondent to show cause why he should not be suspended pending final determination of the cause and fixing a time and place certain for hearing thereon, which shall be not less than fifteen (15) days after service of notice thereof, if by personal service, and not less than twenty (20) days after mailing, if by certified or registered mail. Procedure at the hearing upon such rule to show cause shall be the same as provided herein for hearing upon the complaint and answer, except the burden of proof shall be upon the respondent. If the respondent, in the opinion of the hearing officer or officers shall fail to sustain such burden of proof, the hearing officer or officers shall submit to this Court a written recommendation whether or not the respondent be suspended pending final determination of the cause.



**Section 15. Supreme Court Review**

(a) The respondent, complainant or Commission shall have thirty [30] days after the filing of the hearing officer's finding and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty [30] days of the finding and recommendation of the hearing officer the Supreme Court shall enter judgment or such other appropriate order in the premises.

(b) Upon receipt of written recommendation for suspension, pending final determination of the cause, this Court may forthwith enter an order of suspension thereon. Respondent shall have fifteen [15] days thereafter to petition this Court for a review and a dissolution of such order.

(c) In the event a party does not concur in a factual finding made by the hearing officer and asserts error in such finding in the petition for review, such party shall file with the petition for review a record of all the evidence before the hearing officer relating to this factual issue. Within thirty (30) days of the filing of the transcript, opposing parties may file such additional transcript as deemed necessary to resolve the factual issue so raised in the petition for review. Any transcript filed must be settled, signed and certified as true and correct by the hearing officer. The fee paid for procuring a transcript or additional transcript shall be included in the costs of the disciplinary proceeding.

(d) The respondent, complainant or Commission may file a brief at the time a petition for review is filed. Opposing parties shall have thirty (30) days from the filing of the petition for review to file a brief. The party filing the petition for review shall then have fifteen (15) days to file a reply brief. The brief filed under the provisions of this rule need not conform to the rules of appellate procedure adopted by this Court.

**Section 16. Expenses**

The Executive Secretary shall prepare an itemized statement of expenses allocable to each case, including expenses incurred in the course of the investigatory, hearing or review procedures under this Rule. The judgment of this Court imposing such discipline shall also order the respondent to pay such expenses to the Clerk of this Court. Proceedings for the collection of the costs taxed against the respondent may be initiated by the Executive Secretary on the judgment entered.

**Section 17. Resignations and Admissions of Misconduct**

(a) An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may resign as a member of the bar of this Court, or may consent to discipline, but only by delivering to the Court an affidavit stating that he desires to resign or to consent to discipline and that:

(1) His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting his consent;

(2) He is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for his discipline the nature of which he shall specifically set forth;

(3) He acknowledges that the material facts so alleged are true, and

(4) He submits his resignation or consent because he knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, he could not successfully defend himself.

(b) Upon receipt of the required affidavit, this Court shall enter an order approving the resignation or imposing a disciplinary sanction on consent.



(c) Such order shall be a matter of public record. However, the affidavit required under the provisions of (a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

**Section 18. Petitions for Reinstatement**

(a) Any person who has been suspended from the practice of law under the provisions of this rule may apply for reinstatement by filing with the Clerk of this Court a petition setting forth that the requirements of Section 4 of this rule have been complied with. Nine (9) copies of such petition shall be filed with the Clerk of this Court, together with a filing fee of $250.00.

Upon the filing of such petition and filing fee, the commission shall schedule a hearing. After such hearing, the commission shall determine whether the petitioner has met the requirements set forth in Section 4 of this rule and may recommend that the Supreme Court enter an order continuing the suspension or reinstating the petitioner as a member of the bar of this Court on such terms and conditions as the Supreme Court may deem proper. The applicant for reinstatement may petition this Court for a review of the recommendation of the commission within thirty (30) days of the entry thereof.

(b) For the purpose of conducting hearings on petitions for reinstatement, the commission may request the appointment of a hearing officer or hearing officers, who may but shall not be required to be members of the commission. Such hearing officers shall have the same powers as the hearing officers provided for in Section 13, and shall hear such petition for reinstatement and make written findings of fact and recommendations to the commission. Following the receipt of the findings and recommendations of the hearing officer or officers, the commission shall make its recommendation to this Court on such petition, as set forth in subsection (a) above.

(c) Any person filing a petition for reinstatement shall be responsible for the payment of any and all costs incurred by the commission in conducting a hearing upon said petition for reinstatement which exceed the amount of the filing fee provided for in subsection (a) above. Any such costs shall be paid by the petitioner within ten (10) days of the receipt of a statement therefor from the commission. In no event will there be any refund or rebate of any part of the filing fee as provided for in subsection (a) above.

**Section 19. Assistance of Law Enforcement Agencies**

The Commission, or the Executive Secretary, may request any law enforcement agency or office to assist in an investigation. Such assistance shall include the furnishing of all available information about the respondent.

**Section 20. Immunity**

Each person shall be immune from civil suit for all of his sworn or written statements, made without malice, and intended for transmittal to the Commission, the Executive Secretary, or his staff, or made in the course of investigatory, hearing or review proceedings under this Rule. Sworn or written statements made to others which are not intended for such transmittal have no immunity under this Section. The Executive Secretary, his staff, counsel, investigators, hearing officers, and the Commissioners shall be immune from suit for any conduct arising out of the performance of their duties.

**Section 21. Annual Registration Fee**

Funds necessary to enable the commission to carry out its functions, obligations and duties under this rule shall be provided as follows:

(a) Except as provided in subsection (b), each attorney who is a member of the bar of this Court on August 1, 1978, and each attorney who is a member on August 1



of each year thereafter, shall so long as he is a member of the bar of this Court, pay a registration fee of $25.00 a year on or before October 1 of such year.

An attorney admitted to practice law in this State on a date subsequent to August 1 of each year shall, within ten (10) days of the date of his or her admission to the bar of the Court, or by October 1 of said year, whichever date is later, pay a registration fee of $25.00. The Clerk of this Court shall furnish to the commission the names and addresses of all persons admitted to practice subsequent to August 1 of each year as said persons are admitted.

(b) No registration fee shall be required of:

(1) An attorney who files with the Clerk, on or before the date the registration fee would otherwise be due, an affidavit that he neither holds judicial office nor is engaged in the practice of law in this State, or

(2) A non-resident attorney who obtains leave of court to participate in a case in association with an attorney whose registration fee for the year has been paid.

(c) On or before August 1, 1975, and the first day of August in each subsequent year, the Clerk of this Court shall mail to each attorney then admitted to the bar of this Court or practicing law in this State, a notice that the registration fee must be paid or an exemption affidavit filed with the Clerk on or before the first day of October. The Clerk shall also send a copy of such notice to each clerk for each circuit and superior court in this State for posting in a prominent place in the courthouse and to the Indiana State Bar Association, the Bobbs-Merrill Publishing Company and the West Publishing Company for publication in their respective magazine and advance sheets. Provided, however, the failure of the Clerk to send such notice shall not mitigate the duty to pay the required fee.

(d) Any attorney who fails to pay the registration fee or file the exemption affidavit referred to in subsections (a) and (b) shall be automatically suspended from the practice of law in this State and shall be subject to the

sanctions for the unauthorized practice of law in the event he thereafter engages in the practice of law in this State. Such an attorney's privilege to practice law may be reinstated upon written application, payment of unpaid registration fees and payment of a delinquent fee computed at the rate of $2.00 for each day of delinquency, not to exceed $40.00.

(e) The Clerk of this Court shall issue a certificate of good standing approved by this Court to an attorney upon receipt of the annual registration fee.

(f) All funds collected by the Clerk of this Court shall be deposited in a special account to be maintained by the Clerk and designated as the Supreme Court Disciplinary Commission fund. Disbursements from the fund shall be made solely upon vouchers signed by the Chief Justice of this Court, unless the Chief Justice shall, by prior order, approve the payment of certain regularly recurring expenses by the Clerk upon the request of the Executive Secretary. All salaries to be paid shall be specifically ordered and approved by this Court.

**Section 22. Public Disclosure**

(a) After the filing of a complaint by the commission and before the final disposition on such complaint, the commission, the Executive Secretary or the Clerk of this Court may disclose information which does not relate to the merits of the case to members of the public upon written request, and may disclose information concerning final disposition of a complaint to such persons in all cases except those where the sanction of a private censure is imposed. However, written findings of fact and recommendations of hearing officers as required by Section 14(c) of this rule shall be kept confidential until the final judgment of this Court thereon.

(b) Hearings, either before hearing officers or before the commission, shall generally be open to the public. However, hearing officers or the commission may, in the exercise of sound discretion, order a closed hearing on the motion of the hearing officer or commission, or at the request of the respondent if, in the opinion of such hearing officer or the commission, the conduct of a closed hearing is necessary for any of the following purposes:

(1) For the protection of witnesses;

(2) To prevent likely disruption of the proceedings;

(3) For the security of the hearing officer, members of the commission or any of the parties to the proceedings;

(4) For any other good cause shown which in the judgment of the hearing officer or the commission requires such hearing to be closed.



**Section 23. Annual Report**

The Commission shall make an annual report of its activities to the Supreme Court and the Indiana State Bar Association. The report shall include a statement of income and expenses for the year.

**Section 24. Rules of Procedure**

The Commission may adopt rules and regulations for the efficient discharge of its power and duties. Such rules and regulations shall become effective upon approval by a majority of this Court.

**Section 25. Proceedings to Determine Disability**

(a) A member of the commission, a member of the bar of this Court, the Executive Secretary, any individual or any bar association of this State, may at any time file a verified petition with the commission alleging that an attorney is disabled and should be suspended from the practice of law by reason of physical or mental illness or infirmity, or because of the use of or addiction to intoxicants or drugs.

(b) If such petition is filed by a member of the bar of this Court, by any other person or by a bar association, the Executive Secretary shall conduct an investigation of

the facts stated in said petition and make a report with his recommendation to the commission at its next meeting.

(c) If the petition is filed by a member of the commission or the Executive Secretary, or if after the investigation by the Executive Secretary, the commission determines that there is good reason to believe that disability exists which would justify suspension of the attorney named in said petition, the commission shall hold a hearing to determine if said attorney should be suspended because of such disability. For the purpose of conducting such hearing, the commission may request the appointment of a hearing officer or hearing officers as provided in Section 18(b). The commission shall report its findings and recommendations to this Court. The findings and recommendations to this Court may include a written recommendation for suspension pending final determination of the petition, and may also include a recommendation that the Court appoint a member of the bar of this Court to inventory the client file of said attorney and to report to the Court the status of said matters, and this Court may forthwith enter an order of suspension upon such recommendation. The respondent shall have fifteen (15) days thereafter to petition this Court for a review and a dissolution of such order.

(d) If the commission recommends suspension, the respondent attorney shall have thirty (30) days after the filing of the report and recommendations of the commission to petition this Court for a review of the same. If no petition for review is filed within thirty (30) days of the findings and recommendations of the commission, this Court shall enter an order of suspension of said attorney for the duration of such disability.

(e) In the event that this Court grants a petition under this section, briefs may be filed and oral arguments heard, as this Court shall determine. Such briefs need not conform to the rules of this Court. Upon a review, this Court shall determine whether the findings and recommendations of the commission are supported by sufficient evidence, and shall enter its judgment, with or without opinion, as this Court shall determine.



(f) Any attorney suspended for disability as provided in this section shall have the right to petition for reinstatement upon the termination of such disability in accordance with sections 4 and 18 of this rule.

**Section 26. Duties of Disbarred or Suspended Attorneys**

(a) Duties of disbarred attorneys

(1) In any case where an attorney has been disbarred under the provisions of this rule, said attorney shall promptly notify or cause to be notified by registered or certified mail, return receipt requested, all clients being represented by him in pending matters, of his disbarment and his consequent inability to act as an attorney. Such notice shall advise said clients to seek legal advice of the client's own choice elsewhere.

(2) In addition to notifying clients as set forth above, the attorney who has been disbarred shall move in the Court or agency in which any proceeding is pending for leave to withdraw as such attorney, shall notify all attorneys for adverse parties in such proceedings, and shall furnish the address of the client involved to the Court or agency and to the attorneys for adverse parties.

(3) Any attorney who has been disbarred under the provisions of this rule shall make available to any of his clients, to new counsel for any of said clients or to any other person designated by the Court having appropriate jurisdiction all papers, documents, files or information which may be in his possession.

(4) Within thirty (30) days after the effective date of the disbarment order, the disbarred attorney shall file with this Court an affidavit showing that he has fully complied with the provisions of the order and with these rules and also stating all other State, Federal and Administrative jurisdictions to which he has been admitted to practice. He shall also serve a copy of such affidavit upon the Executive Secretary and shall

set forth the address where communications may thereafter be directed to him.

(5) Proof of compliance with this section of the rule shall be a condition precedent to any petition for reinstatement.

(b) Duties of suspended attorneys.

The suspended attorney shall within twenty (20) days from the date of the notice of his suspension, file with the Court an affidavit showing that:

(1) All pending matters of clients requiring his services during the period of suspension have been placed in the hands and care of an attorney admitted to practice before the Supreme Court of Indiana with the consent of the client.

(2) Clients not consenting to be represented by substitute counsel have been advised to seek the services of counsel of their own choice.

(3) Proof of compliance with this section of the rule shall be a condition precedent to reinstatement.

**Section 27. Protection of Clients' Interests**

Whenever an attorney has been disbarred or suspended and has not fully complied with the provisions of Section 26 above, or if an attorney has disappeared or died or is otherwise unable to comply with said section, the judge of the circuit court of the county in which said attorney maintained his practice shall, upon proper proof of such facts, appoint an attorney or attorneys to inventory the files of said attorney and take such action as may be appropriate to protect the interests of said attorney and his clients.

Any attorney so appointed shall not disclose any information contained in any such files without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed him.

Amended April 1, 1967; June 23, 1971; July 13, 1971; Nov. 30, 1971; March 15, 1972; March 14, 1973; June 11, 1975; Jan. 31, 1976; Jan. 1, 1977; Jan. 1, 1978.



STATE OF INDIANA
COUNTY OF LAKE—SS:

IN THE LAKE CIRCUIT COURT
CROWN POINT, INDIANA

JOHN BRYANT, JR., et al.,

Plaintiffs,

No. C 71-1384 vs.

LAKE COUNTY TRUST COMPANY, et al.,

Defendants.

## FINDINGS OF FACT
[Filed June 24, 1974]

This action came on for hearing before the Court on the 13th, 14th and 20th days of May, 1974, upon the plaintiffs' Motion to Strike Owen W. Crumpacker's appearance on behalf of conflicting parties, to Strike Certain Letters as False and Improper and to Find Owen W. Crumpacker in contempt of Court, which motion was joined in by defendants, Richard Klaas and Lake County Trust Company, an Indiana Corporation in its own right and as Trustee under Trust No. 1653, and the verified objections thereto filed by Martin J. Connelly and Dorothy M. Connelly. Plaintiffs appeared by their attorney, Saul I. Ruman, defendant, Richard Klaas, appeared in person and by his attorney, Kenneth D. Reed, defendant, Lake County Trust Company, appeared by its attorney, Harold Abrahamson, and Martin J. Connelly and Dorothy M. Connelly, appeared in person and by their attorney, Owen W. Crumpacker. Richard Miller, attorney at law and associate of Owen W. Crumpacker, entered his appearance on the last day of the proceedings for and on behalf of Martin J. Connelly and Dorothy M. Connelly. On plaintiffs' Motion, this Court ordered that Richard Miller be joined as an additional respondent to said Petition to Strike, and the allegations and evidence of the parties and arguments of

counsel having been heard and considered, the Court now finds as follows:

1. That attorney Owen W. Crumpacker, of 5217 Hohman Avenue, Hammond, Indiana, has filed, or caused to be filed in this case, a pleading or paper entitled: "MOTION OF MARTIN J. CONNELLY AND DOROTHY M. CONNELLY, both Individually and as Class Representatives of the 2700 Remonstrators Who Signed Remonstrances and Appeared before the Board of County Commissioners of Lake County on May 10, 1971, in Opposition to the Rezoning Petition For Apple Valley Village, and as Citizens, Voters, and Taxpayers, TO VACATE, SET ASIDE AND EXPUNGE THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT ENTERED ON SEPTEMBER 25, 1973" seeking, by its terms, as follows:

> "WHEREFORE, Martin J. Connelly and Dorothy M. Connelly, both individually and as class representatives, move that the Findings of Fact, Conclusions of Law, and Judgment entered on September 25, 1973 be vacated, set aside, and expunged as being entered without jurisdiction over the parties and the subject matter and without due process of law."

Said pleading or paper is filed by said attorney on behalf of persons designated by said attorney as: "MARTIN J. CONNELLY AND DOROTHY M. CONNELLY, both Individually and as Class Representatives of the 2700 Remonstrators Who Signed Remonstrances and Appeared before the Board of County Commissioners of Lake County on May 10, 1971 in Opposition to the Rezoning Petition for Apple Valley Village, and as Citizens, Voters, and Taxpayers."

2. That the named plaintiffs in this case are designated as: "JOHN BRYANT, JR., PAUL HOFFMAN and MARTIN HOFFMAN, individually and as Representatives of the class of all similarly situated persons" . . . "owners of real property in the vicinity of the land owned by Lake County Trust as trustee under Trust 1653, as more fully set out below, and are taxpayers and citizens



of Lake County, Indiana; plaintiffs bring this action in their capacities as owners of real estate adversely affected and as taxpayers and as remonstrators against the actions of the Board of County Commissioners of Lake County, and Lake County Plan Commission as is more fully set forth hereafter. Plaintiffs bring this action on behalf of themselves and all property owners and taxpayers in the school district and/or township in which is located the plot of land referred to below.", and are represented by attorney Saul I. Ruman.

3. Defendants Richard Klass and Lake County Trust Co., an Indiana corporation, in its own right and as Trustee under Trust No. 1653 are likewise defendants in a case in the Lake Superior Court (Room 5), Cause No. 573-448, brought by the same attorney, Owen W. Crumpacker, for and on behalf of the same persons, Martin and Dorothy Connelly, by which complaint said attorney and said persons seek as follows:

> "WHEREFORE, plaintiffs pray that upon full hearing, the judgment of the Lake Superior Court, Room Five be set aside, vacated, and held for naught; that any and all further and additional agreements and judgments predicated upon or in ratification of the proceedings in the Lake Superior Court Room Number Five be vacated, set aside, and held for naught; that any and all agreements purportedly made or participated in by John Bryant, Jr., Paul Hoffman, and Martin Hoffman as so-called 'class plaintiffs' and Richard L. Klaas, Lake County Trust Company as Trustee, and Apple Valley Limited, or their counsel, be declared void and be vacated, set aside, and held for naught; that an injunction issue against Dannie's Mobile Homes, Inc., Apple Valley Limited, Dannie M. Devol, John L. Devol, Diversified Contractor's Inc. and Mid-States Engineering Company, Inc. and all persons acting by, through or on behalf of said defendants from proceeding with or improving, in any way, the proposed mobile home park described as 'Apple Valley Village'; that the costs and expenses of preparing and prose-

cuting this action, including attorneys' fees, be determined and assessed against the defendants as costs in the case; and that punitive damages in the amount of five hundred thousand dollars ($500,000) be awarded the plaintiffs and taxed against the defendants; and for all other just and proper relief in the premises."

4. That this cause and said Cause No. 573-448 involves substantially the same subject matter, being the zoning, rezoning and land usage of Richard Klaas' lands for use as a mobile home park, said lands being located at the intersections of Route 2 and Mississippi Streets, West of Highway I-65, in the unincorporated area (Eagle Creek Township) of Lake County, Indiana.

5. That in June, 1971, Richard Klaas, himself, employed said attorney, Owen W. Crumpacker, and his law firm, Crumpacker, Abrahamson & Reed, including Owen W. Crumpacker, Harold Abrahamson, and Kenneth D. Reed, to represent him and protect his interests in the matter of such zoning, rezoning and land usage.

6. That during the period from June, 1971, to December, 1972, said firm and said attorney Owen W. Crumpacker represented and continued to represent Richard Klaas in connection with this and several other lawsuits involving Richard Klaas' same lands and his same interests.

7. That from June, 1971, to December, 1972, Richard Klaas paid attorney fees and costs to said firm, including Owen W. Crumpacker, for representation in said cases (including this case) in the sum of $7,000.00. Said funds were deposited into the Crumpacker, Abrahamson & Reed account at the Calumet National Bank, Hammond, Indiana, and that the incomes of said firm of Crumpacker, Abrahamson & Reed including the abovementioned deposit were distributed to Owen W. Crumpacker, Harold Abrahamson and Kenneth D. Reed pursuant to an agreed percentage. Partnership tax returns for the years in question were filed with the Federal Government and the various cases for which Klaas employed Crumpacker, Abrahamson and



Reed were included on the annual clients' ledger audit prepared shortly after the end of 1971 showing the various debit and credit balances for the various ledgers insofar as they related to "out of pocket" expenses in the various cases.

8. That in early January, 1973, said firm of lawyers ceased associating together in the law practice, and Owen W. Crumpacker remained at 5217 Hohman Avenue, Hammond, Indiana, while Harold Abrahamson and Kenneth D. Reed opened and occupied their separate office.

9. That Richard Klaas elected to have his representation continued by Harold Abrahamson and Kenneth D. Reed, rather than by Owen W. Crumpacker.

10. That immediately following said time, and this dissolution of said firm, the following action has been taken against Richard Klaas by said Owen W. Crumpacker:

(a) On or about February 27, 1973, Owen W. Crumpacker sent a letter to Richard Klaas together with a statement for attorney fees in the amount of $7,000.00 plus out of pocket expenses for legal services rendered through December 31, 1972, in the following cases:

"*Richard Klaas* vs. John Bryant, Jr., Paul Hoffman, and Martin Hoffman, Lake Superior Court, Room Five, Cause No. 571-797

*Lake County Trust Company, et al.* vs. Board of Commissioners of the County of Lake, et al. Lake Superior Court, Room Five, Cause No. 571-418

John Bryant, Jr., et al. vs. *Lake County Trust Company* et al. Court of Appeals of Indiana, Cause No. 272 A 103

John Bryant, Jr., et al. vs. *Lake County Trust Company, et al.* Lake Circuit Court, Cause No. C 71-1384

John Bryant, Jr., et al. vs. Board of County Commissioners Lake Circuit Court, Cause No. C71-1560

John Bryant, Jr., et al. vs. *Lake County Trust Company, et al.* Court of Appeals of Indiana, Cause No. 472 A 213"

A copy of said letter and statement is attached hereto as Exhibit "A", incorporated herein by reference and made a part of these Findings the same as if set out in full herein. Richard Klaas declined to pay the money demanded.

(b) Then, on or about March 10, or 11, 1973, said Owen W. Crumpacker tendered for filing in the Court of Appeals, Case No. 871A162 (a case in which Richard Klaas was not a party and to which he had no connection) a certain document entitled: "MOTION OF DEFENDANT-APPELLEE JAMES R. DEDELOW FOR REVIEW OF RECORDS FOR FRAUD PRACTICED UPON THE COURTS AND THE TAXPAYERS OF LAKE COUNTY, INDIANA." Said document was not signed by said James R. Dedelow, but rather, was signed and verified by, and only by, said Owen W. Crumpacker. By this document, said Owen W. Crumpacker charged Richard Klaas with various frauds, conspiracies, and assorted misconduct in connection with the very same cases in which Richard Klaas had been represented by said Owen W. Crumpacker and by his firm only a short while before. Shortly thereafter, on motion of said James R. Dedelow, himself, the Court of Appeals found that James R. Dedelow was totally unaware of the preparation, service or filing of the motion by Owen W. Crumpacker; and that James R. Dedelow had never authorized the preparation, service or filing of the motion (all contrary to the Verification of Owen W. Crumpacker), and the Court ordered the motion stricken and expunged from the Court's records as of March 11, 1973.

(c) On or about March 14, 1973, Owen W. Crumpacker wrote a letter to Russell Hopper, 903 - 173rd Place, Hammond, Indiana, 46324 referring to three cases: Dedelow, Inc. vs. Board of County Commissioners and Eibel & Son, Inc., Cause No. 171-872, Eibel & Son, Inc. vs. Dedelow, Inc., Court of Appeals No. 871 A 162 and Lake Superior Court Cause No. 571-418, Lake



County Trust Co., Trustee vs. Board of Commissioners, wherein he stated, among other things, as follows:

> "Dear Mr. Hopper:
>
> "Thank you for your interest in me as your prospective taxpayer's attorney in the above captioned litigation. I will, certainly, give the matter careful consideration.
>
> • • • •
>
> Private papers which Reed, inadvertently, left behind, necessarily, put me on inquiry. I checked into the declaratory judgment suit in the Lake Superior Court, Room No. 5, Cause No. 571-418 in which a decree was entered on August 6, 1971 (when I was vacationing in Colorado) and discovered a violent fraud on the court and the remonstrators in the Lowell area."

(d) Then, on July 26, 1973, said Owen W. Crumpacker filed a complaint (again signed by himself only) against Richard Klaas and Kenneth D. Reed as two of more than 40 defendants. Again, this complaint (Lake Superior Court, Cause No. 573-448) sought to charge Richard Klaas and Kenneth D. Reed with various similar conduct to that previously charged. Again, the complaint referred to and involved the same cases in which said Owen W. Crumpacker and his firm had represented Richard Klaas as aforesaid. The named plaintiffs were Martin J. Connelly and Dorothy M. Connelly.

11. Since June, 1971, and to and including this very day, said Owen W. Crumpacker has had and retains Richard Klaas' records and files delivered, made and kept in connection with said cases and representation, to the exclusion of Richard Klaas.

12. That during the period June 18, 1971, to December, 1972, Richard Klaas was represented by the firm of Crumpacker, Abrahamson and Reed, as aforesaid. On certain occasions, he discussed his legal matters with all mem-

bers of that firm, including Owen W. Crumpacker, Harold Abrahamson and Kenneth D. Reed. On occasion Richard Klaas sat in attorney Owen W. Crumpacker's office and discussed the cases with him and answered all questions asked by said Owen W. Crumpacker, and freely discussed all aspects of the cases with him. Attorney Kenneth D. Reed represented Richard Klaas at all Court hearings held. At no time did Richard Klaas ever authorize, expressly or by implication, said attorney, Owen W. Crumpacker, to engage in the conduct herein described as occurring subsequent to January and February, 1973. At no time did Richard Klaas ever waive the attorney-client privilege between himself and said Owen W. Crumpacker or his said firm.

13. The representation by Owen W. Crumpacker and Richard Miller, on behalf of the Connellys, Martin J. and Dorothy M. Connelly, presents a direct conflict of interest on the part of said attorneys by reason of Owen W. Crumpacker's former attorney-client relationship with Richard Klaas. The conflict on the part of Richard Miller is the result of his association with Owen W. Crumpacker.

14. Attorneys Owen W. Crumpacker and Richard Miller are disqualified from representing the Connellys, Martin J. and Dorothy M. Connelly, or other persons whose interests are adverse to that of Richard Klaas in connection with any matters relating to the zoning, rezoning and land usage of the mobile home park hereinabove referred to.

15. That all actions taken by said attorney Owen W. Crumpacker in this case and in connection with all other cases involving the subject matter of this case in which Richard Klaas and Lake County Trust Company, as Trustee under Trust No. 1653, were parties, were taken by said attorney with full knowledge of his prior representation of said Richard Klaas and said Lake County Trust Company, as Trustee under Trust No. 1653, and in violation of said attorney's fiduciary duty owing to said former clients. That during the period from June, 1971 through December, 1972, there existed by and between said attorney



Owen W. Crumpacker, on the one hand, and said Richard Klaas and Lake County Trust Company, as Trustee, on the other hand, the relationship of attorney and client.

16. That these findings should be filed with the Disciplinary Commission of the Supreme Court of Indiana for appropriate action.

MADE and ENTERED this 24th day of June, 1974.

/s/ James T. Moody, Special Judge

## CONCLUSIONS OF LAW

On the basis of the foregoing findings, the Court concludes the law to be as follows:

1. The law is with the petitioners.

2. Attorneys Owen W. Crumpacker and Richard A. Miller are disqualified from representing Martin J. Connelly and Dorothy M. Connelly in these or other proceedings concerning matters involving the zoning, rezoning or land usage involving a mobile home park at or near the intersection of Route 2 and Mississippi Streets, west of I-65, in the unincorporated area of Eagle Creek Township, Lake County, Indiana, by reason of Crumpacker's former attorney-client relationship with Richard Klaas and Richard Miller's current relationship with Owen W. Crumpacker.

3. That during the period from June, 1971 through December of 1972, there existed by and between said attorney Owen W. Crumpacker, on the one hand, and said Richard Klaas and Lake County Trust Company, as Trustee, on the other, the relationship of attorney and client.

4. Petitioners are entitled to the relief sought.

MADE and ENTERED this 24th day of June, 1974.

/s/ James T. Moody, Special Judge

STATE OF INDIANA
COUNTY OF LAKE—SS:

IN THE LAKE CIRCUIT COURT
CROWN POINT, INDIANA

JOHN BRYANT, JR., et al.,

Plaintiffs,

No. C 71-1384 vs.

LAKE COUNTY TRUST COMPANY, et al.,

Defendants.

## JUDGMENT, ORDER AND DECREE

[Filed June 24, 1974]

The Court having made its Findings of Fact and Conclusions of Law, it is now Ordered as follows:

1. That the appearances of Owen W. Crumpacker and Richard Miller in this cause be stricken as attorneys for and on behalf of Martin J. Connelly and Dorothy M. Connelly and any members of the class who said Connellys purport to represent as said class representatives, and;

2. That said attorneys, Owen W. Crumpacker and Richard Miller, are precluded from participating in these proceedings or from aiding or counseling other attorneys who may represent the Connellys or members of the alleged class in any matters involving interest adverse to those of Richard Klaas concerning the zoning, rezoning and land usage of the mobile home park hereinabove referred to, and;

3. That a copy of this Court's Findings of Fact, Conclusions of Law, and Judgment, Order and Decree be forwarded to the Disciplinary Commission of the Supreme Court of the State of Indiana for appropriate action.

4. That all pleadings and papers filed by said attorney Owen W. Crumpacker, and or his associate, Richard Miller, on behalf of Martin J. Connelly and/or Dorothy M. Connelly, in this case or in any other case involving Richard Klaas and Lake County Trust Company, as Trustee



under Trust No. 1653, which in any way pertains to the subject matter of this action, be stricken and expunged from the records.

5. That Martin J. Connelly and Dorothy M. Connelly be granted 30 days from the date of this Order to obtain counsel to represent them in this matter.

ALL OF WHICH IS ORDERED, ADJUDGED AND DECREED this 24th DAY OF JUNE, 1974.

/s/ James T. Moody, Special Judge

## CERTIFICATE OF SERVICE

I certify that on June 24, 1974, service of a true and complete copy of the above and foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT, ORDER AND DECREE, was made upon each party or attorney of record herein by depositing the same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

/s/ Harriett L. McMillian

## EXHIBIT "A"

*(Letterhead Of)*
CRUMPACKER, ABRAHAMSON & REED

February 27, 1973

Mr. Richard Klaas
P. O. Box 7004
Merrillville, Indiana 46410

Dear Mr. Klaas:

Enclosed is my bill, in duplicate, for legal services rendered and expenses advanced in connection with the following described litigation:

Richard Klaas vs. John Bryant, Jr., Paul Hoffman and Martin Hoffman, Lake Superior Court, Room Five, Cause No. 571-797

Lake County Trust Company, et al vs. Board of Commissioners of the County of Lake, et al, Lake Superior Court, Room Five, Cause No. 571-418

John Bryant, Jr., et al vs. Lake County Trust Company, et al, Court of Appeals of Indiana, Cause No. 272 A 103

John Bryant, Jr., et al vs. Lake County Trust Company, et al, Lake Circuit Court, Cause No. C71-1384

John Bryant, Jr., et al vs. Board of County Commissioners, Lake Circuit Court, Cause No. C71-1560

John Bryant, Jr., et al vs. Lake County Trust Company, et al, Court of Appeals of Indiana, Cause No. 472 A 213

On October 17, 1972, Miss Somerville on instructions from Kenneth D. Reed, issued a statement which included out-of-pocket expenses of $429.93, but which omitted the charges for legal services rendered.

By way of explanation, Reed, along with Abrahamson, and unknown to me had withdrawn approximately $40,000 apiece from the firm commercial account in January and February of 1972. These funds represented, in principal part, fees earned exclusively by me. In lieu of an accounting as requested and in accordance with the memo of understanding attached to the statement, said parties secretly determined to terminate their employment or association with me and this firm and to establish a new account in the Mercantile National Bank for fees due the old firm, but intentionally not billed until after the first of January under their private arrangement.

The existence of a lease with parties by the names of Hess and Gray, 5253 Hohman Avenue was brought to my attention in early December in a conference with Reed. I then put the landlord and his agent on notice that I would hold him liable along with Reed and Abrahamson for losses sustained if they participated in the program hereinabove outlined. Notwithstanding due notice, so I am informed, Gray and Hess accepted rental payments, occupancy, and



the installation of cabinets for the threatened removal of case files from this office.

Fred Donnersberger of the law firm of Wilson, Benne, Feingold & Donnersberger, attorney for Harold Abrahamson and Kenneth D. Reed, has advised me that his clients' employment and/or association with me and this firm was terminated as of *January 1st, 1973*. Under these circumstances, said Abrahamson-Reed have no right to fees and expenses which were earned and/or accrued prior to December 31st, 1972 but which were intentionally not billed. At the entreaty of Mr. Donnersberger and without being fully informed as to the facts, I delivered a portion of the Klaas files to Mr. Donnersberger to enable Reed to get an extension of time for a brief on appeal. Reed, previously, had misled me by false statements that the retainer, and fees previously paid, were to cover all services in the cases to be performed in the future. Reed also stated on another occasion that the cases had been settled through an arrangement with an attorney Saul I. Ruman. One Sherwood Hill, of the Welch law firm in Indianapolis, allegedly, had undertaken the negotiations.

I will expect your prompt remittance in payment of the enclosed bill.

Also, I would like to accomplish the withdrawal of my appearance and the appearance of the firm of Crumpacker, Abrahamson & Reed in your litigation (if it remains unsettled) and to turn over the case files to Fred Donnersberger for further disposition. I will do so on the payment of the enclosed statement. Otherwise, I reserve the right to take appropriate legal action against all parties involved in this scheme.

Yours,

/s/ .....

Owen W. Crumpacker

OWC:cj

Enc.

cc: Fred Donnersberger, Abrahamson & Reed, Stanford Hess, Mr. Gray

Hammond, Indiana
February 27, 1973

Richard Klaas
Lake County Trust Company
P. O. Box 7004
Merrillville, Indiana 46410
In Account With:
Owen W. Crumpacker
Attorney at Law
300 Hammond Building
5217 Hohman Avenue
Hammond, Indiana 46320
(Formerly Crumpacker, Abrahamson & Reed)

The Balance of Legal Services Rendered Through December 31, 1972, in the Following Cases:

*Richard Klaas* vs. John Bryant, Jr., Paul Hoffman and Martin Hoffman
Lake Superior Court, Room Five, Cause No. 571-797
*Lake County Trust Company, et al* vs. Board of Commissioners of the County of Lake, et al
I ake Superior Court, Room Five, Cause No. 571-418
John Bryant, Jr., et al vs. *Lake County Trust Company, et al*
Court of Appeals of Indiana, Cause No. 272 A 103
John Bryant, Jr., et al vs. *Lake County Trust Company, et al*
Lake Circuit Court, Cause No. C71-1384
John Bryant, Jr., et al vs. Board of County Commissioners
Lake Circuit Court, Cause No. C71-1560
John Bryant, Jr., et al vs. *Lake County Trust Company, et al*
Court of Appeals of Indiana, Cause No. 472 A 213

| | |
|---|---|
| Total Fees To Date: | $7,000.00 |
| Out-of-Pocket Expense: | 399.01 |
| Xerox Expense: | 46.80 |
| Telephone Expense: | 32.49 |
| TOTAL STATEMENT: | $7,478.30 |



STATE OF INDIANA
COUNTY OF LAPORTE—SS:

IN THE LAPORTE CIRCUIT COURT
LAPORTE, INDIANA

STATE OF INDIANA

vs. CAUSE NO. 36721-C

ABE KUSHNER, et al.

ORDER

The Court having been duly advised after a hearing on the Motion for Leave to Withdraw his appearance by Owen Crumpacker as attorney for the defendant landowners and his later Motion to Dismiss that Petition for Leave to Withdraw, now grants the Motion for Leave to Withdraw and denies the Motion to Dismiss said Petition.

The Court finds that the Motion of Owen Crumpacker for Leave to Withdraw his appearance was submitted on November 12, 1974.

That on November 13, 1974, defendant landowners filed their response to said Petition for Leave to Withdraw demanding return of all funds for contingent fees and expenses prepaid to Owen Crumpacker.

A hearing on said Petition was held on December 13, 1974, and continued until January 28, 1975.

On January 27, 1975, Owen Crumpacker entered a Motion to Dismiss his Petition for Leave to Withdraw.

The Motion for Leave to Withdraw his Appearance having been submitted and hearing thereon, and the same having been taken under advisement after argument thereon, the Court having fully considered said matters and being fully and sufficiently advised in the premises, now finds that pursuant to Rule 41 of the Indiana Rules of Trial Procedure the Motion of Owen Crumpacker for Leave to With-

draw his appearance for defendant landowners should be granted.

The Court further finds that Owen Crumpacker's motion for Dismissal of his Motion for Leave to Withdraw his appearance pursuant to Trial Rule 41 should be denied.

The Court further finds that upon granting Owen Crumpacker's Motion for Leave to Withdraw his appearance for defendant landowners, said Owen Crumpacker shall immediately turn over to the defendant landowners all files, papers and other things pertaining to said cause of action.

The Court further finds that the contingent fee heretofore advanced to said Owen Crumpacker prior to final determination of said cause of action should be returned to said defendant landowners.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Owen Crumpacker's Motion to Dismiss his prior Motion for Leave to Withdraw his appearance for the defendant landowners is denied and that his Motion for Leave to Withdraw his appearance in said cause is granted, and his appearance is ordered withdrawn.

It is further ordered that Owen Crumpacker forthwith turn over to the defendant landowners in said cause all files, papers and other things in his possession which pertain to and are a part of said cause of action.

It is further ordered that Owen Crumpacker immediately make an accounting to said defendant landowners of the moneys advanced by said landowners for expenses incurred in the preparation of said cause of action for trial and that he return to said defendant landowners the contingent fee heretofore advanced to said Owen Crumpacker by said defendant landowners.

Dated this 24th day of March, 1975.

/s/ Alban M. Smith
Alban M. Smith, Judge
LaPorte Circuit Court



STATE OF INDIANA
COUNTY OF LAPORTE—SS:

IN THE LAPORTE CIRCUIT COURT
LAPORTE, INDIANA

STATE OF INDIANA

vs. CAUSE NO. 36721-C

ABE KUSHNER, et al.

ORDER

This matter having come on for hearing on the 29th day of April, 1975 before the Hon. Alban M. Smith, regular judge of the LaPorte Circuit Court, and the defendants-petitioners appearing in person and by counsel, and the plaintiff appearing by Deputy Attorney General Robert Hassett and local attorney John Anderton, and the defendant-petitioners having shown the court by the Return of the Sheriff of Lake County, Indiana, that the Rule to Show Cause issued herein, returnable on the 29th day of April, 1975 at 9:30 a.m., was delivered to the respondent Owen Crumpacker on the 15th day of April, 1975, and by reading same to him, which said Return is in the following words and figures, to-wit: (here insert)

And the hour being 11:25 a.m. C.D.S.T., said Owen W. Crumpacker is now three times loudly and audibly called in open court and appears not.

And Petition for Rule to Show Cause submitted, evidence heard, and the court being duly advised in the premises, the court finds that the matters set forth in the petition for Rule to Show Cause are true; that respondent Owen W. Crumpacker has wholly failed to obey the Court's Order of March 24, 1975; that respondent has failed and refused to respond in person to the Rule to Show Cause issued herein on April 9, 1975 by appearing for hearing at the time and place specified in said Rule to Show Cause; that respondent is guilty of wilful disobedience of this

court's Order issued and entered March 24, 1975, and duly served upon him. The court further finds that petitioners are entitled to the relief prayed.

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED that respondent Owen W. Crumpacker is in contempt of this court for wilful disobedience to the Order of this court entered March 24, 1975 and for failure to appear at the time and place specified in the Rule to Show Cause entered herein and served on said respondent.

The Sheriffs of LaPorte and Lake Counties, Indiana are ordered to attach the person of said respondent Owen W. Crumpacker and to cause him to be incarcerated in the LaPorte County Jail until he shall purge himself of contempt by complying with and obeying this court's order entered March 24, 1975, which said attachment shall be on and after the 16th day of May, 1975 or as soon thereafter as said attachment may be had, unless said respondent Owen W. Crumpacker shall have first purged himself of contempt by complying with and obeying said Court Order of March 24, 1975, which compliance shall be made to appear by order of this court.

THE CLERK IS ORDERED to issue a copy of this Order to the Sheriff of Lake County, Indiana instanter, to be served upon the respondent Owen W. Crumpacker forthwith.

Dated this 29th day of April, 1975.

/s/ Alban M. Smith
Alban M. Smith, Judge
LaPorte Circuit Court

SHERIFF'S COSTS $6.00

Came to hand this 29th day of April, 1975 I served this writ on the 1st day of May, 1975 on the within named defendant, Owen W. Crumpacker by reading to and within the presence and hearing and by delivering a true copy of the same to him.

LESLIE O. PRUITT, Sheriff
By /s/ ....., Deputy.



## IN RE WOODMAR REALTY COMPANY

Cite as 294 F.2d 785 (1961))

---

**In the Matter of the**
**WOODMAR REALTY COMPANY,**
**a Corporation, Debtor,**

**WOODMAR REALTY COMPANY,**
**a Corporation, Appellant,**

**v.**

**Walter A. McLEAN, Trustee and Herschel B. Davis, Trustee's Attorney, Appellees.**
**No. 13215.**

United States Court of Appeals
Seventh Circuit.
June 23, 1961.

As Amended on Denial of Rehearing
Oct. 2, 1961.

Proceedings on petition for removal of bankruptcy trustee and his attorney. The United States District Court for the Northern District of Indiana, Hammond Division, Robert E. Tehan, J., dismissed the petition, and an appeal was taken. The Court of Appeals, Mercer, District Judge, held that the petition was insufficient.

Affirmed.

**1. Bankruptcy—132**

Petition, alleging perpetration of fraud upon court and requesting removal of bankruptcy trustee and his attorney, was insufficient. Fed.Rules Civ.Proc. rules 8, 9(b), 28 U.S.C.A.

**2. Evidence—43(1)**

Bankruptcy court was duty bound to take judicial notice of its records and files in cause, and it was duty of reviewing court to take notice of facts which had come to

its knowledge through records presented to it on several appeals in same case.

**3. Federal Civil Procedure—1835**

It was not necessary to construe motion, to dismiss petition for removal of bankruptcy trustee and his attorney, as admitting all facts alleged, where such alleged facts were shown by record of case to be untrue. Fed.Rules Civ.Proc. rules 8, 9(b), 28 U.S.C.A.

**4. Bankruptcy—339**

Trustee has no duty to object to every claim filed against bankruptcy estate. Bankr.Act, § 47, sub. a(8), 11 U.S.C.A. § 75, sub. a(8).

**5. Bankruptcy—245**

Trustee in bankruptcy represents every class of creditors of bankrupt.

**6. Bankruptcy—151**

Trustee takes same property rights which bankrupt owned.

**7. Bankruptcy—205, 274¼**

Trustee is charged with duty to discover and honor recorded liens upon property in his hands, and he may be held personally liable for his negligence if he disposes of property in his hands without discovering record fact of existence of valid lien upon property.

**8. Attorney and Client—32**

Repeated use of ill-founded charges of fraud as trial tactic is foreign to established concepts of honest and ethical advocacy and will not be tolerated.

---

Benjamin Wham, Chicago, Ill., Owen W. Crumpacker, Hammond, Ind., for appellant.

Gilbert Gruenberg, Gary, Ind., for appellees.

Before KNOCH and CASTLE, Circuit Judges, and MERCER, District Judge.



MERCER, District Judge.

The only issue before us for decision upon this appeal by the bankrupt, Woodmar Realty Company, is whether the court below properly dismissed Woodmar's amended petition for the removal of the appellees, Walter A. McLean and Herschel B. Davis, as trustee in bankruptcy and attorney for the trustee, respectively. For convenience, the parties are hereinafter sometimes referred to as appellant and appellees.

Appellant's amended petition, filed January 7, 1959, charged that appellees had perpetrated, and were perpetrating, a fraud upon the court and Woodmar and requested that appellees be removed by the court as trustee in bankruptcy and as counsel, respectively. Appellees moved to dismiss. After a hearing, the court granted that motion upon its conclusion that "the amended petition is so wanting in merit and so contemptuously violative of the rules of pleading, particularly Rules 8 and 9 of the Federal Rules of Civil Procedure" that it might be summarily dismissed and upon his finding that the amended petition was not filed in good faith.

[1] We have reviewed the record and the amended petition carefully and are convinced that the petition is so wanting in sufficient allegations of fact as to present not even token compliance with the provisions of Rule 9(b) which require a pleader averring fraud to state "with particularity" the circumstances alleged to constitute fraud. F.R.C.P. 9(b), 28 U.S.C.A. This opinion might rest there and the judgment be affirmed without further discussion, were it not for the pervading impression gathered from this record that the removal petition constitutes an attempt by appellant's attorney, Mr. Crumpacker, to harass appellees in the continued performance of their official functions and a near-contemptuous abuse of the processes of a federal court.

For the above reason we think it necessary to analyze the amended petition at some length in the light of the record as it has come to our knowledge. In that endeavor, we rely upon the procedural history of this case as sum-

marized in the opinions upon prior appeals. In re Woodmar Realty Co., 7 Cir., 284 F.2d 815; In re Woodmar Realty Co., 7 Cir., 241 F.2d 768, 64 A.L.R.2d 883. Basically, we hereinafter supplement those summaries, but we have not hesitated to resort to repetition thereof to the extent deemed necessary to demonstrate the propriety of our conclusions which are hereinabove and hereinafter expressed.

The inception of this cause lies in the depression which struck the nation with tornadic force in 1929. In the 1920's, appellant, a corporation, was engaged in the business of subdividing and selling real estate in the City of Hammond, Indiana. Substantial improvements touching various parcels of appellant's lands were made by the City of Hammond and financed by special assessment bonds issued and sold pursuant to the so-called Barrett Law.

By separate lot and parcel, appellant's real estate was impressed with the liens of Barrett Bonds issued on some sixty separate bond rolls. In each instance, appellant in consideration of the privilege of paying the assessment obligation in installments spread over a period of years, executed a statutory waiver of the right to question the legality of assessment and agreement to pay installments as the same became due.

It appears that appellant had been a completely inactive corporation for many years prior to January, 1941, when this cause was commenced. No payments had been made by it on account of the principal and interest of Barrett bond obligations after 1929. Suits had then been commenced in state courts for the foreclosure of Barrett bonds issued upon some fifty rolls affecting appellant's real estate and, as the court below has found, sale of much of the land in foreclosure was imminent.

Against that background, this proceeding was commenced on January 13, 1941, when an involuntary petition was filed on behalf of three bondholders for reorganization of appellant under Chapter X of the Bankruptcy Act. 11 U.S.C.S. § 501 et seq. Appellant's only assets were substantial real estate located in Hammond, which was then encumbered by a lien for state taxes in the sum of $161,-



000.00, by the lien of mortgage bonds in an aggregate sum in excess of $290,000.00, and by the defaulted Barrett bonds which were, respectively, liens upon separate lots, tracts and parcels of the total real estate holdings. In addition, appellant was then indebted to general creditors in the aggregate sum of approximately $14,000.00.

A proposed plan of reorganization was approved by Judge Slick. Barrett bond claims were classified as class 2 claims. With court approval, the tax claim and mortgage claims were compromised and settled for a nominal percentage of the respective amounts thereof. Appellant's real estate was sold free of all liens under court orders providing that all liens would attach to the proceeds of the sales in the hands of the trustee. Such sales continued until early 1951, and were approved by the court upon some fifty separate petitions reporting sales as they were made from time to time.

Also, when the reorganization petition was approved on January 25, 1941, an injunction was issued by the court enjoining creditors and all other persons from enforcing liens against appellant's property, and from prosecuting, or continuing the prosecution of, any suit against appellant in any court for the foreclosure of liens against its property. Pursuant to that injunction, the pending foreclosure suits were dismissed insofar as they related to appellant's real estate.

On December 22, 1952, appellee McLean was appointed successor trustee as a result of circumstances hereinafter related and appellee Davis was retained as attorney for the trustee. Thereafter, on February 16, 1953, after notice and a hearing, Judge Swygert entered an order converting the proceedings into a straight bankruptcy, and ordered that bankruptcy be proceeded with pursuant to Section 236(2) of the Bankruptcy Act. 11 U.S.C.A. § 636(2).

On September 7, 1955, appellee McLean filed his final report as trustee and petitions recommending the allowance of more than 300 class 2 lien claims. By that report, he proposed that substantially all of the funds in his hands be allocated to the payment of those claims. Thereafter,

appellant and some of its stockholders filed objections to a substantial number of the class 2 claims. On March 5, 1956, after a hearing upon motions, filed by the trustee and a number of the class 2 claimants, Judge Swygert entered an order striking appellant's objections. An appeal was taken and we reversed that judgment, holding that appellant, though adjudicated a bankrupt, had standing to object to claims because of the circumstances that disallowance of class 2 claims might result in a surplus of assets for refund to appellant. In re Woodmar Realty Co., 7 Cir., 241 F.2d 768, 64 A.L.R.2d 883.

Before our mandate was filed, Judge Swygert disqualified himself to preside further in the cause because of circumstances which are hereinafter related and the cause was assigned to Judge Parkinson.

Upon the return of our mandate, Judge Parkinson scheduled a pre-trial conference upon all claims and objections thereto. On the day preceding that conference, June 27, 1957, appellant filed a petition for removal of appellees as trustee and as counsel for the trustee. At the pre-trial conference on June 28, Judge Parkinson determined that he would schedule a trial of a representative claim to establish the law of the case with respect to all of appellant's objections. Claim No. 441 was selected for that purpose. At the same time, an order, which we believe to be patently erroneous, was entered directing the trustee and his attorney not to participate in the trial of objections to that claim.[1] Other class 2 claimants were, however, invited to participate. On the same date, a hearing upon appellant's petition for removal of appellees was set for July 17, 1957.

A trial of objections upon claim 441 was held on July 15, 1957, and briefs were ordered. On July 17, the date set

---

[1] That order was not appealed, and the propriety thereof was not an issue in the second appeal in which we approved settlement agreements disposing of a number of the pending class 2 claims. However, in his dissenting opinion, Judge Duffy did indicate his disapproval of the order. In re Woodmar Realty Co., 7 Cir., 284 F.2d 815, 821, 822.



for a hearing upon the removal petition, that petition was withdrawn by appellant.

Thereafter, while the issues presented upon the trial of objections were still under advisement, Judge Parkinson was elevated to this court and the case was assigned to his successor, Judge Grant. Judge Grant disqualified himself for personal reasons, and the case was reassigned by Judge Duffy, then Chief Judge of the Seventh Circuit, to Judge Tehan. By stipulation of interested parties, the issues upon the trial of objections were taken by Judge Tehan for decision upon the record made before Judge Parkinson.

In the meantime, on May 19, 1958, counsel for appellant filed a petition for removal of appellees which was almost an exact duplicate of the petition which had been withdrawn by him on July 17, 1957. The petition was answered and set for a hearing. On the date set for that hearing, Judge Tehan, on his own motion, ordered appellant to replead to comply with the requirements of Rule 9(b). Appellant's amended petition was then filed on January 7, 1959.

The amended petition is characterized by a gross lack of any sufficient allegation of fraud as we have hereinabove concluded. In fact, counsel can give arguable credence to this appeal and arguable merit to the amended petition only by *asserting supposed legal principles which are so grossly absurd that we cannot believe they are here honestly asserted.*[*] In the interest of smooth rhetorical transition all of such contentions are not here particularized, but they are subsequently discussed briefly in proper context.

[2, 3] Counsel first contends that we must pretend that the record facts laboriously compiled in the records and files of the court below in more than twenty years of proceedings do not exist and that we may not on this appeal take judicial notice of such facts. It is elementary that the court below was duty bound to take judicial notice of its

---

[*] Emphasis supplied unless otherwise noted.

records and files in this cause and that it is our duty to take notice of facts which have come to our knowledge through the records presented to us on the several appeals in this same case. Paridy v. Caterpillar Tractor Co., 7 Cir., 48 F.2d 166, 168; Littleton v. DeLashmutt, 4 Cir., 188 F.2d 973; Fletcher v. Bryan, 4 Cir., 175 F.2d 716; In re Davis Mfg. Co., D.C.D.Kan., 95 F.Supp. 200, 203. However absurd the above contention, it is yet only the minor premise employed to support a hypothesis that appellee's motion to dismiss appellant's amended petition must be construed as admitting all facts alleged, even though such alleged facts are shown by the record of the case to be untrue. That hypothesis is too tenuous to require any comment. See E. g., Interstate Natural Gas Co. v. Southern California Gas Co., 9 Cir., 209 F.2d 380, 384; Fletcher v. Jones, 70 App.D.C. 179, 105 F.2d 58, 61. Since we must take judicial notice of the fact, whenever it be the fact, that the allegations of appellant's amended petition are refuted by the record, we accordingly determine the sufficiency of the allegations of the amended petition in the light of the record of the case as it is known to us.

Both the original petition and the amended petition are summarized in some detail in Judge Tehan's opinion filed October 21, 1960. We adopt that summary as our own, and here employ only such narrative description of the charges of the amended petition as is consistent with an intelligible discussion of the allegations thereof in the light of the record.

If the amended petition has any factual basis whatsoever, it tends to state a charge not against appellees, but only a renewal of charges made at least as early as November, 1952, against the prior trustee, Charles L. Suprise, and other persons. Thus, it is alleged that Suprise, and others, conspired to perpetrate a fraud upon the court and appellant in order to obtain the initial finding of appellant's insolvency, to have themselves appointed as fiduciaries having control of appellant's property and thereafter to dispose of and distribute appellant's property to class 2 claimants to their own benefit and profit.



The amended petition contains not a single allegation connecting either of the appellees with the alleged conspiracy and fraudulent conduct of those persons, except for the record fact that appellee Davis was appointed by the court as co-counsel for Suprise in May, 1950, and served Suprise in that capacity until hearings were commenced in 1951, which ultimately led to the removal of Suprise as trustee. Upon that record fact hangs the tenuous allegation that Mr. Davis became tainted by the alleged fraud of Suprise through that representation and that appellee McLean became likewise tainted through his association with Mr. Davis after Mr. McLean was appointed successor trustee.

In his opinion dismissing the amended petition, Judge Tehan correctly and accurately concluded that such allegations were an *"obvious attempt to establish guilt by association"*, and that the allegations were refuted by facts found and adjudicated in this case. We approve those conclusions without reservation, and resort to the résumé of the procedural history of the case which follows only because we think it necessary to document the *evident fact of gross bad faith which characterizes these allegations.*

When Judge Slick granted the involuntary petition for reorganization of appellant, Suprise was appointed trustee in the reorganization and Carl A. Huebner was appointed as attorney for the trustee. Thereafter, a plan of reorganization was approved by the court and a bondholders committee consisting of owners of special improvement bonds and attorneys for such owners was appointed.

The record made during the first ten years of this proceeding discloses no participation by appellant in the cause after January 25, 1941, when the involuntary petition for reorganization was approved. Appellant's participation on the latter date consisted of the filing of an answer, in which all allegations of the reorganization petition were admitted, including the allegation of appellant's insolvency. During that ten year period, as previously related, the foreclosure suits affecting appellant's property were dismissed pursuant to the injunction issued by Judge Slick, the tax

liens and mortgage liens were compromised and settled and appellant's real estate was sold with court approval, free of the liens of the Barrett Law bonds. The record discloses no objection by appellants at any stage of those proceedings, including the real estate sales.

In the meantime, in 1950, Carl Huebner was convicted in an Indiana court of criminal conduct in conjunction with the foreclosure of Barrett Law bonds. Judge Swygert, who was then presiding in the case, effected Huebner's removal as attorney for Suprise and on May 23, 1950, appointed the appellee and Arnold Huebner, Carl's brother, as co-counsel for the trustee.

An amendment to the plan of reorganization was filed in the early part of 1951, and set for hearing at a meeting of interested persons to be held on April 16, 1951. Also pending at that time were petitions filed by Suprise, Carl Huebner, Arnold Huebner, Mr. Davis, members of the bondholders committee and attorneys for the bondholders committee for the allowance of fees.

On the latter date, appellant filed a petition for the removal of Suprise as trustee, alleging that neither he nor the Huebners were disinterested persons for the reason that Suprise and Carl Huebner were principal owners of Lake Assessment Bonds Service, Inc., a holder and collection agent for a number of the special improvement bonds which were a lien upon appellant's real estate. It was also alleged that S. C. Ennis & Company, selected by Suprise as agent for sale of the real estate, had sold a large part of appellant's real estate to a corporation owned by itself.

At the same time, appellant filed objections to the fee petitions of Suprise and both Huebners upon the ground that each owned, or represented, interests which were adverse to those of both the creditors and stockholders of appellant. Objection was made to the fee petitions of members of the bondholders committee and their attorneys upon the ground that they had employed their positions to effect the purchase of outstanding bonds which were a lien upon appellant's real estate during their tenure as court-appointed fiduciaries.



Appellant's objection to Mr. Davis' petition for fees was predicated upon the alleged fact that Mr. Davis had represented a disqualified trustee and had, in that representation, worked in collaboration with a disqualified co-counsel, Arnold Huebner, and a disqualified bondholders committee. It was also alleged that Mr. Davis had been remiss in his failure to discover and report to the court the activities and conflicting relationships of Suprise and other fiduciaries.

One other petition by appellant, namely a petition requesting the court to find that appellant was not insolvent, was before the court with the petition for removal of Suprise and appellant's objections to the fee petitions.

After extensive hearings had been held in 1951 and 1952, Judge Swygert entered a memorandum order on October 29, 1952, disposing of the above pending petitions and objections. The court found that Suprise and Carl Huebner, as substantial owners of Lake Assessment, held an interest which was materially adverse to the creditors and stockholders of appellant, and concluded that those persons would not have been appointed as trustee and trustee's attorney had that adverse interest been known to the court. The court found, further, that certain sales of real estate by Ennis had not been made at arm's length and that several of the persons acting in a fiduciary capacity in the estate had used their appointment to profit from speculation in Barrett bonds which were liens upon appellant's property. The court concluded, however, that no prejudice to creditors or the stockholders of appellant was revealed by the evidence.[2]

---

[2] The methods and practices employed by Huebner and others who were connected with the early proceedings in this case in State court litigation involving Barrett bonds are documented in part in the following cases. In re Huebner, 233 Ind. 363, 118 N.E. 2d 898; In re Harrison, 231 Ind. 665, 109 N.E.2d 722; Harrison v. State, 231 Ind. 147, 106 N.E.2d 912, 32 A.L.R.2d 875; Gardner

(footnote continued on following page)

An order was then entered removing Suprise as trustee, disbanding the bondholders committee, denying the fee petitions of Suprise, the Huebners and certain other of the fiduciaries and directing that statutory notice be given of a hearing to convert the cause to a straight bankruptcy pursuant to Section 236(2).

The fee petition of Mr. Davis and those of certain of the members of the bondholders committee were allowed. In allowing the Davis fee petition, the court found that there was no evidence that Mr. Davis had knowledge of the improper interest and conduct of Suprise and the other fiduciaries or that appellant's attorney had ever called those facts to his attention prior to the hearing upon the petition to remove Suprise.

Finally, by the same opinion, Judge Swygert rejected appellant's petition for a decree of its solvency, holding that appellant was bound by the admission of insolvency made in its answer filed in 1941.

On November 7, 1952, appellant and some of its stockholders filed a motion for a new trial and for amendment of the findings of fact entered October 29, 1952, alleging, in part, as follows: a. That the court had erred in allowing compensation to certain members of the bondholders committee in view of the alleged proof that they had conspired with Suprise and his attorneys to perpetrate a

---

v. State, 229 Ind. 368, 97 N.E.2d 921; Gilkison v. Darlington, 123 Ind.App. 28, 106 N.E.2d 473. From those cases it appears that fraud did affect the foreclosure proceedings upon some rolls of bonds issued under the Barrett Law.

In this case, it is a documented fact that extensive hearings were held relative to the activities of Suprise, Huebner and others, after which the court determined that their actions had been in some respects improper, but that those actions had not detrimentally affected appellant's estate and the administration thereof. It is apparent from Judge Swygert's opinion entered October 29, 1952, that he was convinced that no fraud had entered into the early stages of proceedings in this case. Since no appeal was taken from the order entered following that opinion it reasonably appears that appellant's counsel was also convinced that the proceedings had not been affected by fraud.



fraud upon the court and upon appellant; and b. That the court had erred in failing to find that that original reorganization petition had been a part of a conspiracy to perpetrate a fraud upon the court and appellant to obtain a decree of insolvency and to gain control of appellant's assets.

No error was alleged with respect to the allowance of fees to Mr. Davis. That motion was denied on February 10, 1953, and no appeal was taken.

In the meantime, on December 3, 1952, one Samuel H. Cohn was appointed successor trustee. Mr. Cohn died within two weeks thereafter and the appellee, McLean, was appointed successor trustee on December 22, 1952. Appellee, Davis, was retained by the court as attorney for the trustee.

On February 16, 1953, after notice and a hearing, appellant was adjudicated a bankrupt. From the findings of the court entered at that time, it appears that counsel for appellant consented to that adjudication.

Pursuant to authority granted by the court, appellees employed auditors to audit the records of Barrett bonds affecting appellant's property as shown by the books and records of the Treasurer of the City of Hammond. An audit was made, and on the basis thereof appellee McLean filed his final report and petition for allowance of certain class 2 claims on September 7, 1955. By that report he proposed that claims upon special assessment bonds be allowed, and that funds be allocated therefor as follows: a. The sum of $382,989.63 to 310 claims on which the bonds had been produced and checked; b. The sum of $17,705.48 to 43 claims on which the bonds had not been produced and checked; and, c. The sum of $43,436.47 to remaining outstanding bonds and coupons upon the fifty assessment rolls upon which no claims had been filed. It was proposed that the latter two aggregate sums be paid to the Clerk of the Court for the use of bondholders ultimately entitled thereto.

At this point in the case, appellant and some of its stockholders filed their objections to class 2 claims, which led

to the order of March 5, 1956, and the first appeal as hereinabove related. In re Woodmar Realty Co., 7 Cir., 241 F. 2d 768.

On March 20, 1956, appellant filed a motion to vacate the order of November 22, 1941, and the findings of fact and conclusions of law entered October 29, 1952, insofar as it was there adjudicated that appellant was insolvent. That motion alleged that such orders had been procured by fraud; that appellees had been and were suppressing defenses and objections to class 2 claims; and that the motion was timely "because this is the first time that Woodmar and its stockholders have been prejudiced by" the orders of November 22, 1941, and October 29, 1952.

The latter motion was stricken on March 20, 1956, and though the appeal was taken from the order of March 5, 1956, it appears from our opinion in In re Woodmar Realty Company, 7 Cir., 241 F.2d 768, 64 A.L.R.2d 883, that the March 20th order striking appellant's motion to vacate the 1941 order and the 1952 findings and conclusions was not then presented to this Court for review.

The history of events following the issuance of our mandate in the first appeal as hereinabove related, i. e., the selection of claim 441 for trial and the filing and withdrawal of the 1957 removal petition follow in sequence at this point and are pertinent. Finally, the amended petition under review followed.

From the foregoing summary of some pertinent parts of the record facts in this cause emerges *a pattern of conduct which has characterized the actions of counsel for appellant in this case for some ten years.* Whatever may be said of the conduct of Suprise, Huebner and others prior to the hearings in 1951 and 1952, an able trial judge rectified the situation by the 1952 opinion and order. Though appellant expressly requested the court to find that this case had its inception in fraud and that a fraud had been perpetrated upon the court by Suprise and others, no finding of fraud was entered. On the contrary, the court expressed the opinion that the evidence failed to show



that any prejudice resulted from the misconduct then disclosed. The record indicates that appellant and its counsel were then in accord with that conclusion, inasmuch as no appeal was taken from the 1952 decision, and thereafter, appellant, through its counsel, consented to the adjudication of appellant's bankruptcy and to continuation of the cause in bankruptcy pursuant to Section 236(2).

Notwithstanding that apparent accord, counsel has advanced the same charges of fraud in 1956 and 1957. Thereafter, on May 19, 1958, counsel for appellant stated in a pre-trial conference that there were no prior orders of court which he felt should be vacated because of elements of fraud alleged to affect the cause. Contemporaneously with that statement, the fraud charges were renewed by the 1958 petition which, as amended in 1959, is now before the court for review.

If nothing were here involved except the time element, there is a limit to the period of years over which the same dead horse may be beaten. The Suprise era of this case became final when no appeal was taken from the orders entered in 1952 and 1953 rejecting the contention that the adjudication of insolvency was obtained through fraud. The same contention was advanced and rejected in 1956, and no appeal was taken.

There is, however, more involved here than the time element, namely, *a vituperous tendency of counsel to read some heinous motive into the acts of anyone who dares to oppose him and of every judge who rules adversely to him.* The record certainly supports the inference drawn in appellee's brief that the 1957 petition, which was withdrawn, was a warning to appellees to not interfere in the plans of appellant's counsel, and that the 1958 petition followed when that warning was not heeded. In that respect, we note that the 1957 petition was filed on the eve of the commencement of litigation upon appellant's objections to class 2 claims, that it was withdrawn shortly after the order of court which neutralized the trustee and his counsel insofar as the trial of the test case was concerned and within two days after the trial of the test case

had been completed and that the 1958 petition was filed a mere matter of days prior to appellant's filing of settlement agreements which were the subject of the second appeal. In re Woodmar Realty Co., 7 Cir., 284 F.2d 815. We think that fact of timing is significant, and it is certainly consistent with the pattern which the record reveals of *charging both the dead and the living with fraud whenever an adverse ruling is contemplated or becomes a reality.*

Although formal charges are confined to the trustee and his counsel, appellant's brief reveals that the *trial judges are not immune from similar attack. We abhor the insinuations that every trial judge, except the late Judge Parkinson, who has been burdered by this case since 1951, is either a blundering idiot, or, impliedly, a tool of some heinous scheme.* Those insinuations cannot be justified by anything which appears of record. Moreover, they are apparently motivated by the same *lack of honesty which is apparent in the circumstances surrounding Judge Swygert's order disqualifying himself.*[3]

Before leaving this phase of the case, we remark the ridiculous assertion that the fact that appellees propose to distribute substantial sums to class 2 claimants reveals a purpose to carry out a scheme devised by Suprise who

---

3 Prior to his appointment to the District Court, Judge Swygert was a member of a law firm which had filed a class suit to forever close Barrett bonds upon one roll which included bonds which were a lien upon a part of appellant's real estate. He apprised all parties to this case of that fact shortly after the case was assigned to him, and he was then assured by Mr. Crumpacker, as attorney for appellant, that that fact constituted no reason for his disqualification. Notwithstanding that assurance, that fact was alleged by Mr. Crumpacker as the predicative basis for a motion asking Judge Swygert to disqualify himself, which motion was filed some five years later and shortly following the entry of the order of March 5, 1956, striking appellant's objections to class 2 claims. Although Judge Swygert denied that motion, he did, as related in the text of this opinion, thereafter disqualify himself upon his own motion and assign the case to Judge Parkinson.



proposed a similar distribution of assets in 1951. More must be said of this later, but the fact remains that Mr. McLean, as trustee, represents the creditors of appellant and his recommendations, though yet neither rejected nor approved by the court below, appear on the surface to be a conscientious effort to recommend the allowance of claims which he believes to be valid.

The guilt by association allegations are followed by general allegations that appellees did not file objections to all of the class 2 claims, that they sought to suppress defenses to those claims by filing the trustee's final report in 1955 proposing the distribution of a substantial part of the funds in the hands of the trustee in satisfaction thereof and that appellees sought to prevent appellant from protecting the estate against those lien claims by moving to strike appellant's objections thereto. It is contended that each of those allegations supports appellant's conclusions that appellees are continuing a fraudulent scheme which began with Suprise, et al.

[4] At the outset we reject the frivolous assertion of supposed legal principle that it is the duty of a trustee in bankruptcy to object to every claim filed against the estate which he represents. The Act enjoins a trustee in bankruptcy to examine all claims and "object to the allowance of such claims as may be improper." 11 U.S.C.A. § 75, sub. a(8). Actually, counsel apparently concedes that the duty to object, generally, attaches only with respect to claims which the trustee deems invalid, but he argues that objections must be made here because the claims are based upon liens of special improvement bonds which are said to be the obligations of the City of Hammond, not of appellant.

[5-7] That asserted exception is a complete misconception in at least two respects. The obligation of these bonds became the personal obligations of appellant upon its execution of the installment-payment waiver and agreement. Feder v. Gary State Bank, 98 Ind.App. 513, 186 N.E. 379; Central Bldg. & Loan Ass'n v. Gary State Bank, Ind.App., 186 N.E. 382; Larimer v. Gary State Bank, Ind. App., 186 N.E. 384; La Plante v. Englehart's Estate, Ind.

App., 186 N.E. 385. Of greater significance, a trustee in bankruptcy represents every class of creditors of the bankrupt. He takes the same property rights which the bankrupt owned and he is charged with a duty to discover and honor recorded liens upon the property in his hands, In re Wakey, 7 Cir., 50 F.2d 869, 75 A.L.R. 1521; New York-Brooklyn Fuel Corp. v. Fuller, 2 Cir., 11 F.2d 802, and he may be held personally liable for his negligence if he disposes of property in his hands without discovering the record fact of the existence of a valid lien upon that property. In re Prather, D.C.S.D.Ill., 138 F.Supp. 433; Grodsky v. Sipe, D.C.E.D. Ill., 36 F.Supp. 244. Filing of objections without legal basis therefor is never required.

The general allegation, actually an insinuation, that appellees did not file objections to class 2 claims is simply partly untrue in the light of record facts. Of the some 340 claims filed in the reorganization and the some 202 claims filed in bankruptcy after February, 1953, appellees obtained the disallowance of 142 class 2 claims as barred by the statute of limitations, or as duplicated claims, and the partial disallowance of 24 additional claims filed by former fiduciaries. Appellees recommended the allowance of the balance of the class 2 claims upon their reported determination that each was a valid and subsisting lien upon the funds in the hands of the trustee and not subject to any legal defense. We express no opinion as to the merit of the trustee's final report from which the latter recitals of fact are taken since that report has not been acted upon by the court below. Appellant, however, does not contradict the recited fact that a number of class 2 claims were resisted and disallowed, and the report stands of record as a refutation of the allegation that appellees objected to no class 2 claims.

What is said above applies with equal force to the general allegations that appellees sought to suppress defenses to class 2 claims by recommending their allowance and by resisting appellant's efforts to object to such claims. The trustee's final report, which is yet pending, recites appellee's determination that no valid defenses could be made to the lien claims which he recommended for payment. The lower court's indicated decision of the test case upon claim 441, which is now of record, suggests that Judge Tehan agrees with appellees that the objections to those claims which appellant asserts are without merit. We express no opinion upon that point, since that decision is not before us on review. We note the indicated decision only for its tendency to illustrate the gross absurdity of the contention that the machinations of some nefarious plot led to the trustee's recommendation that certain of the class 2 claims be allowed.



The *attempt to inject some sinister connotation into appellee's attempts to foreclose appellant's claim of right to object to the improvement bond claims, is ridiculously frivolous.* Judge Swygert sustained the motions by appellee, McLean, and others to strike appellant's objections, and Judge Finnegan, of this court, dissented from our decision reversing the judgment striking appellant's objections. The point is, if some sinister connotation must be attached to appellee's act in preparing and filing the trustee's motion to strike, the "sinister" view which prompted that act was shared by two very able jurists who believed that the trustee's motion to strike was well founded in law.

Further specific analysis of statements contained in the removal petition could serve no purpose. We find nothing of substance in any factual averment, but a wealth of conclusionary statements which lead invariably to *counsel's vitriolic conclusions that appellees, who dare to oppose him, are guilty of heinous misdeeds.*

We do note that counsel's statement that the 1958 petition and the amended petition were filed at the suggestion and direction of Judge Tehan is shown of record to be untrue. We approve the concluding paragraph of Judge Tehan's opinion, as follows, as a summary of the record in that respect:

> "My own personal experience convinces me that there exists *a complete lack of good faith.* I was appointed in this case in late December, 1957, and held

a few days of pre-trials in January, 1958. At that time and subsequently, petitioner's counsel repeatedly and persistently *made charges of fraud against practically all persons who were in any sense adverse to him.* I cautioned him and then finally admonished him that I would no longer tolerate *these unlawyerlike, abusive charges against fellow attorneys, who were the objects of his charges.* In so doing I did advert to the elementary fact that there was a method and remedy, if he had a proper claim. It was only then, some ten months after he had withdrawn his charges that he refiled them. This period, from July of 1957 to May 19, 1958, is certainly a substantial period for a person professing to believe that a fraud is being perpetrated upon the court and his client, to withhold action. His assertion of these grave charges, withdrawal of it, reinstatement of it have more the aroma of a pressure tactic than a sincere and righteous concern."

[8] Because we are convinced that the record in this case *presents a contemptible, if not contemptuous, abuse of the legal processes of a feleral court,* we have dwelt at length upon a historical résumé of the record facts as they have come to our attention. We did that advisedly in order that there may be no mistake that we are cognizant of the nature and severity of the question with which we deal. *We find a sordid picture of the repeated use of ill-founded charges of fraud as a trial tactic which is foreign to established concepts of honest and ethical advocacy.* We want it clearly understood that repetition of that practice as disclosed by this record will not be tolerated in the future.

Appellee's motion to file a supplemental brief was taken under advisement upon oral argument of this appeal. That motion is granted and the Clerk is directed to file the supplemental brief which was tendered to the court with that motion.

The judgment is affirmed.



## IN RE CRUMPACKER

Cite as 130 N.E.2d 775

---

**In re Owen W. CRUMPACKER.**
**Clarence H. Harney, Hammond, Indiana,**
**Relator-Appellant.**
**No. 29285.**

Supreme Court of Indiana.
Dec. 22, 1955.

Action commenced by filing of "An information and motion to disbar". The Circuit Court, Newton County, Newell A. Lamb, J., entered judgment against relator, and he appealed. The Supreme Court, Bobbitt, C. J., held that it could not be said that trial court, in entering judgment against relator, had denied him relief to which he was entitled under the evidence.

Affirmed.

**1. Attorney and Client—57**

Where petition to consider as an original information in Supreme Court the record filed in appeal from judgment for respondent in proceeding commenced by filing of "An information and motion to disbar" failed to comply with Supreme Court rule pertaining to disciplinary proceedings, it was dismissed. Supreme Court Rules, rule 3-21; Burns' Ann.St. § 4-3614.

**2. Attorney and Client—36(1)**

Circuit and superior courts have jurisdiction concurrent with Supreme Court in disbarment proceedings brought in conformity with statute. Burns' Ann.St. § 4-3614.

**3. Attorney and Client—53(2), 57**

In action commenced by filing of "An information and motion to disbar", burden was upon relator to establish allegations of his information by preponderance of evidence, and decision against him could not be attacked upon

ground that evidence was insufficient to sustain it; but relator could properly assert on appeal that decision of trial court denied him relief to which he was entitled under evidence and hence was contrary to law. Burns' Ann. St. § 4-3614.

**4. Attorney and Client—57**

In determining whether decision of trial court, in action commenced by filing of "An information and motion to disbar", had denied relator the relief to which he was entitled under evidence and hence was contrary to law, Supreme Court would consider only evidence most favorable to respondent, together with any reasonable inferences which would be drawn therefrom, and only if the evidence was without conflict and could lead to but one conclusion, and trial court had reached opposite conclusion, could decision of trial court be set aside as contrary to law. Burns' Ann.St. § 4-3614.

**5. Attorney and Client—53(2)**

In action commenced by filing of "an information and motion to disbar", it could not be said that trial court, in entering judgment against relator, had denied him relief to which he was entitled under evidence. Burns' Ann.St. § 4-3614.

---

George E. Hershman, Crown Point, Straley Thorpe, James J. Richards, Hammond, for appellant.

Owen W. Crumpacker, Hammond, pro se, J. Edward Barce, Kentland, for appellee.

BOBBITT, Chief Justice.

This action was commenced by the filing of "An Information and Motion to Disbar" in the Lake Superior Court under Acts 1937, ch. 88, § 2, p. 452, being § 4-3614, Burns' 1946 Replacement.

The issues were closed by the filing of a verified answer by respondent. Upon change of venue to the Newton Cir-



cuit Court, trial was had by the court which found for the respondent-appellee, Crumpacker, and entered judgment against relator-appellant accordingly.

[1] *First*: We are confronted at the outset by a petition to consider the record filed in this appeal as an original information in this court and that the petition be considered as supplemental thereto.

Rule 3-21 of the Supreme Court, 1954 Edition, pertaining to disciplinary proceedings is as follows:

> "Original actions to disbar, suspend, or otherwise discipline members of the bar of this state may be instituted in this court by the Attorney General of Indiana, or a commission of members of the bar of this court to be appointed annually by this court, without leave. No other person may commence such a proceeding without leave of court first had and obtained, and the clerk is directed not to permit such proceedings to be filed, except by the Attorney General or said commission, until such leave has been granted."

The petition here was not filed by the Attorney General or the Disciplinary Commission appointed by this court. Neither was leave obtained by relator-appellant for its filing. Because the petition in no manner complies with the provisions of Rule 3-21, *supra,* it is dismissed.

*Second*: Having disposed of the petition mentioned above, we will now consider the questions presented by the record on appeal.

[2] Circuit and superior courts have jurisdiction concurrent with this court in disbarment proceedings brought in conformity with the provisions of § 4-3614, supra. Beamer v. Waddell, 1943, 221 Ind. 232, 45 N.E.2d 1020; In re Harrison, 1953, 231 Ind. 665, 109 N.E.2d 722.

The grounds relied upon for reversal are: (1) That the decision and findings of the court are not supported by sufficient evidence; and (2) The decision and findings of the court are contrary to law.

[3, 4] The burden was upon relator, Harney, to establish the allegations of his information by a preponderance of the evidence, In re Filipiak, 1953, 232 Ind. 414, 417, 113 N.E.2d 282; and a decision against him cannot be attacked upon the ground that the evidence is insufficient to sustain it. Pokraka v. Lummus Co., 1952, 230 Ind. 523, 528, 104 N.E.2d 669.

Relator-appellant may properly assert that the decision of the trial court denied him the relief to which he was entitled under the evidence and hence is contrary to law. Pokraka v. Lummus Co., supra. To determine this question, however, we will consider only the evidence most favorable to respondent-appellee, together with any reasonable inferences which may be drawn therefrom; and it is only where the evidence is without conflict and can lead to but one conclusion, and the trial court has reached an opposite conclusion, that the decision of the trial court will be set aside on the ground that it is contrary to law. Pokraka v. Lummus Co., supra.

[5] The evidence in the record before us—which we deem unnecessary to set out or summarize—is conflicting upon the only issue presented. From a careful examination of this record we cannot say that relator-appellant was denied the relief to which he was entitled. Hence, the decision of the trial court was not contrary to law and must be affirmed.

Judgment affirmed.

LANDIS, ARTERBURN, ACHOR and EMMERT, JJ., concur.



## MANCUSO v. INDIANA HARBOR BELT R. R.

Cite as 568 F.2d 553 (1978)

---

**Joseph MANCUSO, Plaintiff-Appellee,**

**v.**

**INDIANA HARBOR BELT RAILROAD, Defendant.**

**Appeal of Owen W. CRUMPACKER.**
**No. 77-1466.**

United States Court of Appeals,
Seventh Circuit.
Jan. 20, 1978.

Rehearing In Banc Denied
March 1, 1978.

An attorney filed a notice of appeal from an order entered by the United States District Court for the Northern District of Indiana, Hammond Division, Jesse E. Eschbach, Chief Judge, requiring him to show cause why he should not be suspended from the practice of law. The Court of Appeals held that the order was not final for purposes of appeal.

Appeal dismissed.

**1. Federal Courts—585**

Trial court's action in ordering attorney to show cause why he should not be suspended from practice of law before such court was not final order for purposes of appeal. 18 U.S.C.A. § 401(3).

**2. Federal Civil Procedure—2747**

Attorney's appeal from order of trial court requiring him to show cause why he should not be suspended from practice of law was frivolous, taken for delay, and im-

posed an unnecessary burden on Court of Appeals and appellee; damages and double costs would therefor be assessed. 18 U.S.C.A. § 401(3); Fed.Rules App.Proc. rules 2, 38, 28 U.S.C.A.

---

Owen W. Crumpacker, Hammond, Ind., for appellant.

Saul I. Ruman, Hammond, Ind., for plaintiff-appellee.

Before FAIRCHILD, Chief Judge, and PELL and BAUER, Circuit Judges.

PER CURIAM.

Owen W. Crumpacker filed a notice of appeal from an order entered February 22, 1977 in the District Court for the Northern District of Indiana. The record has been docketed in this court and briefs submitted by Appellant Crumpacker and counsel for Appellee Mancuso. Appellee's brief contends, in part, that the appeal should be dismissed (1) because of appellant's failure to prepare his brief in compliance with the rules and (2) because the order appealed from is not a final appealable order.

[1] The order appealed from was entered February 22, 1977 upon a motion of plaintiff to bar Appellant Crumpacker from practicing in the district court until certain costs of appeal (allowed in the decision of an earlier appeal) are paid. After describing the motion and summarizing certain activity of appellant in connection with the above entitled case, both in the district court and the court of appeals, the order provided:

> Accordingly, Owen W. Crumpacker is ordered to show cause, if any he has, on or before March 10, 1977 as to why he should not be suspended from the practice of law in this court. In the event that such costs are paid by or before March 10, 1977, then this order will be deemed to be discharged. Otherwise, it shall remain in full force and effect. In the event such costs are not paid, the showing of Owen W. Crumpacker shall be in writing. In the event that said showing shall be inadequate in the opinion of this court, a further hearing will be held, at which time Owen W. Crumpacker will be required to show cause as to why he should not be permanently barred from the practice of law in the United States District Court for the Northern District of Indiana.



It is crystal clear that the order is not a final order. It is equally clear that an attorney with the length of experience of appellant must have known it was not a final order. The record on appeal, returned pursuant to appellant's designation, consists in large part of returns to the order to show cause and various other motions and objections filed by appellant on various dates *after* the date of the order appealed from. The only document in the record filed before the date of the order appealed from was the motion of plaintiff which was the predicate for the order to show cause, appealed from. Moreover, on March 1, 1977, three weeks before the filing of the notice of appeal, the district court entered an order reciting appellant's filing in the Supreme Court of a petition for certiorari to review a related judgment of this court, and, on that account continuing without date the order appealed from, directing appellant to show cause on or before March 10, 1977.

In a vain attempt to characterize the order appealed from as final, appellant's notice of appeal described the order as "finding defendant guilty of alleged misconduct."

Compounding that attempt, appellant, on page 7 of his brief, paraphrased a part of the order as "By way of punishment, defendant was ordered to pay $545.60 in costs taxed in favor of 'Joseph Mancuso, plaintiff-appellee' by the Court of Appeals or be permanently barred from the practice of law in the United States District Court for the Northern District of Indiana."

Further, on page 25 of his brief, appellant described the order as follows: "Judge Eschbach took cognizance of defendant's failure to pay the 'Bill of Costs' in the amount

of $545.60, found *defendant guilty of misconduct under Title 18 U.S.C. § 401(3) and, in addition to entering a fine in the amount of the 'Bill of Costs,' sentenced him to be permanently disbarred.*" We have italicized a portion of the description which is clearly a misrepresentation.

Much of the material in appellant's fifty-page brief would have been wholly irrelevant to the appeal if the order were appealable, or even if it had disbarred appellant as falsely characterized.

Accordingly, this court finds:

(1) That the order appealed from is not final, nor otherwise appealable, and the appeal must be dismissed.

[2] (2) That the appeal was frivolous, taken for delay, and imposed an unnecessary burden on this court and on appellee, and that appellant must have so known. The matter is clear from the record and briefs, and, pursuant to Rule 2, F.R.A.P., the matter is decided without argument.

(3) That it is appropriate, pursuant to Rule 38, F.R.A.P., to award just damages and double costs to appellee.

(4) That appellee's damages, at a minimum, are a reasonable attorney's fee for the preparation of appellee's brief, and that, at a minimum, such attorney's fee is determined at $350.

And IT IS ORDERED,

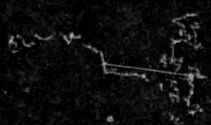
That the Clerk of this court enter judgment dismissing the appeal, awarding double costs in favor of appellee and against appellant, and awarding recovery by appellee from appellant of $350 damages.

---



Respectfully submitted,

SAUL I. RUMAN
Attorney at Law
5261 Hohman Avenue
Hammond, Indiana 46320
*Respondent Pro Se*



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

79-403

[redacted]

OWEN W. CRUMPACKER,

Petitioner,

vs.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT

Respondents.

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

---

# BRIEF FOR RESPONDENT, INDIANA SUPREME COURT DISCIPLINARY COMMISSION, IN OPPOSITION

## I.

## Opinions Below

The Petitioner's summary of the opinions below is correct, except that the Respondent says that the findings of fact, conclusions of law, and recommendation of the Hearing Officer filed on November 9, 1976, do not constitute a part of the opinions below of the Supreme Court of Indiana.

## II.

## Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

## III.

## Questions Presented

The Respondent will respond below in its Argument to each of the three (3) questions presented.

## IV.

## Constitutional Provisions, Statutes, and Court Rules Involved

The Petitioner has fairly summarized those provisions of the various constitutional provisions, statutes and court rules he claims

have application to the questions presented.

V.

Statement of the Case

A substantial part of the Petitioner's statement of the case is mere argument and surplusage. Some of it is erroneous. It is an erroneous statement that the Disciplinary Commission did not properly challenge the Hearing Officer's findings (Petitioner's Brief, p. 11). On January 7, 1977, the Disciplinary Commission timely filed its thirty-eight page Petition For Review pursuant to A&D Rule 23, Section 15(a). On March 30, 1977, the Disciplinary Commission timely filed its two hundred sixty-seven page Brief Of Indiana Supreme Court Disciplinary Commission In Support Of Petition For Review pursuant to A&D Rule 23, Section 15(c).

VI.

Reasons for Denying the Writ

The Petitioner first asserts that he was denied due process and equal protection of the



laws when the Supreme Court of Indiana allegedly violated its own rules by:

(a) Entertaining a review of its Hearing Officer's finding when such findings were exculpatory of the Petitioner;

(b) Finding professional misconduct where no such finding was made by the Hearing Officer;

(c) Finding professional misconduct without and outside of the record;

(d) Making a determination adverse to the Petitioner without first giving the Petitioner notice of and an opportunity to be heard on the question whether the Court could find and impose discipline where none was found by the Hearing Officer.

Each contention is utterly without merit.

The Petitioner's Brief makes statements about the Rules of the Supreme Court of Indiana applicable to attorney disciplinary proceedings which are wholly inaccurate and incorrect. It is not true that Admission and Discipline Rule 15 provides for review by the Court of a Hear-

ing Officer's findings only when those findings are adverse to the attorney. Rule 15(a) specifically provides to "(t)he respondent, complainant or Commission..." the right to petition the Court for a review of the findings of a hearing officer. (Petitioner's Appendix, p. A82). The Petitioner also incorrectly states that the Supreme Court of Indiana has never previously found misconduct where no such finding was made by the Hearing Officer. Although not apparent from the opinion of the Court, the case of In Re Smith (1976), ____Ind.____, 351 N.E.2d 1, represents a situation where the Supreme Court of Indiana found misconduct even though the findings of the hearing officer were in the favor of the attorney. In other cases, the Court has increased the discipline recommended by the hearing officer. See, e.g., In Re Farr (1976), 264 Ind. 153, 340 N.E.2d 777.

The Petitioner makes the unfounded and serious charge that the Supreme Court of Indiana decided his case without the benefit



of the record. (Petitioner's Brief, p. 16). He offers no proof in support of this charge, save that the Clerk's record shows no transmission of the transcript to the Court. He fails to cite any statute or authority that requires the Clerk to make such an entry or any proof that such transmission was not accomplished. It is true that the Supreme Court of Indiana was required to decide the case without having the benefit of the trial exhibits; the Petitioner refused to return them to the Court. (See Petitioner's Appendix, pp. A27-A28). But the opinion of the Court makes it plain that the case was decided by it with the benefit of the transcript of the evidence.

The Supreme Court of Indiana was not required to give the Petitioner any advance notice that its decision was going to differ from that of the Hearing Officer. The matter was before the Court for review and the Petitioner admits that he "prepared, served and filed extensive briefs demonstrating, again

with specific reference to the 4700 page transcript and the exhibits on file in the Clerk's office, why the petitions for review should not be granted". (Petitioner's Brief, pp. 10-11). He also admits to filing objections and "extensive supplemental objections" to the petition for review. The Court followed its Rules and, as it so happened, decided the case adversely to the Petitioner. The Court's Rules did not require that the Petitioner be specifically forewarned of a possible adverse result, as such a consequence is plainly possible from the language of the Rules.

In summary, the Supreme Court of Indiana adhered to its Rules in processing and deciding the case below, and Petitioner has wholly failed to demonstrate how any of such Rules or the manner in which they were applied in this case were violative of any of the Petitioner's constitutional rights.

The underlying theme of the Petitioner's brief is that the Supreme Court of Indiana acted unlawfully, arbitrarily, and in violation



of its Rules, merely by reaching a conclusion in this case that was contrary to the findings of the Hearing Officer. This theme is based upon the Petitioner's total misconception of the role of the Supreme Court of Indiana under its subject Rules. That role was restated by the Court in this very case as follows:

> "The remaining portion of the petitions for review filed by the Disciplinary Commission and the complainant, and the objections and supplemental objections filed by the Respondent concern the substantiation of alleged acts of misconduct and the factual and legal conclusions to be drawn from the factual findings. These issues are resolved through the review process employed by this Court in disciplinary matters. Ultimate findings of fact upon which a determination of misconduct is weighed are reached through a complete examination of all pleadings, including the transcript. The findings of the Hearing Officer are considered; however, they are not controlling on this Court. In re Wireman, Supra, In re Murray, Supra, In re Pawlowski, (1959), 240 Ind. 412, 165 N.E.2d 595." (Petitioner's Appendix, p. A 27)

In deciding this case, the Court followed the principles which it had enunciated in its decision in In re Murray (1977), ____Ind.____, 362 N.E.2d 128, 130-131, as follows:

"It should be noted at the outset that a disciplinary proceeding is an original action in this Court. Ind. Const., Art. 7, §4. As such, this Court sits as a trial court and must determine issues of fact; this clearly distinguishes the disciplinary proceeding from an appeal. In re Pawlowski (1959), 240 Ind. 412, 165 N.E.2d 595.

"Recognizing this distinction, in the absence of any agreement by the parties as to factual issues, this Court examines and reviews all matters which have been submitted in a particular cause. An examination of the previous opinions of this Court demonstrates that the findings of fact are only the initial starting point for review by this Court. See, In re Wood (1976), Ind., 358 N.E.2d 128; In re Smith (1976), Ind., 351 N.E.2d 1; In re Bradburn (1966), 248 Ind. 29, 221 N.E.2d 885; In re Holovachka (1964), 245 Ind. 483, 198 N.E.2d 381. It is through this complete examination of all matters that this Court makes its ultimate findings of fact upon which a determination of misconduct is weighed.

"The findings of the Hearing Officer thus are reviewed within this Court's consideration of all relevant matters. These findings do receive emphasis in that the Hearing Officer observes the witnesses, absorbs the nuances of unspoken communication, and by this observation attaches credibility to the testimony, but such findings are not necessarily controlling on this Court and never have been. In re Pawlowski, supra.

"In the end, the findings of fact reached by this Court are the product



of this Court's examination of the entire record with the above noted consideration being given to the findings of fact submitted by the Hearing Officer. Thus, there is no standard of review as applied within appellate procedure, but merely the application of a process of determination whereby this Court finds facts as is required in all original actions."

The application of the above principles to this case resulted in the Petitioner's disbarment. A reading of the Court's opinion in this case would convince any fair minded person of the correctness of such result.

## Conclusion

The decision below is correct. For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

Sheldon A. Breskow

David B. Hughes

Attorneys for Respondent
814 ISTA Building
150 West Market Street
Indianapolis, Indiana 46204
Telephone: 317-232-1807

79-403

Supreme Court, U. S.
FILED
NOV 13 1979
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

## No. 79-1127

**OWEN W. CRUMPACKER,**

*Petitioner,*

vs.

**INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT,**

*Respondents.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Indiana**

## BRIEF FOR RESPONDENT SAUL I. RUMAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SAUL I. RUMAN
Attorney at Law
5261 Hohman Avenue
Hammond, Indiana 46320
*Respondent Pro Se*

Midwest Law Printing Co., Chicago 60601, FInancial 6-3988

TABLE OF CONTENTS


PAGE

I. OPINIONS BELOW ..... 1

II. JURISDICTION ..... 2

III. CONSTITUTIONAL PROVISIONS, STATUTES AND RULES ..... 3

IV. QUESTIONS PRESENTED FOR REVIEW:

A. Is Petitioner's Matter, Either In Form Or In Substance, Sufficient To Invoke The Jurisdiction Of This Court To Consider Issuance Of Its Writ Of Certiorari? ..... 10

B. Was Petitioner Denied Or Deprived Of A "Right" Bestowed, Guaranteed And Protected By The United States Constitution When The Supreme Court Of Indiana, On Review Of The Proceedings Before Its Hearing Officer, Determined To Disbar Petitioner On The Basis Of The Record Of Proceedings And Briefs Filed, Without Affording Further Evidentiary Hearing, Or Giving Petitioner Further Notice Of The Indiana Supreme Court's Intention To Disbar? ..... 10

C. Did Petitioner Raise And Preserve In The Proceedings In State Court The Constitutional Issues Which He Now Seeks To Assert? .. 10

D. Has Petitioner Accurately Portrayed To This Court The Nature Of The "Right" Sought To Be Protected, Being His Right To Continue To Practice Law In The Method And Manner He Has Chosen? ..... 10

V. STATEMENT OF THE CASE ..... 11

VI. ARGUMENT:

A. Petitioner's Matter Is Not, Either In Form Or In Substance, Sufficient To Invoke The Jurisdiction Of This Court To Consider Issuance Of Its Writ Of Certiorari. ..... 16

B. Petitioner Was Not Denied Or Deprived Of A "Right" Bestowed, Guaranteed And Protected By The United States Constitution When The Supreme Court Of Indiana On Review Of The Proceedings Before Its Hearing Officer, Determined To Disbar Petitioner On The Basis Of The Record Of Proceedings And Briefs Filed, Without Affording Further Evidentiary Hearing, Or Giving Petitioner Further Notice Of The Indiana Supreme Court's Intention To Disbar. ..... 18

C. Petitioner Did Not Raise And Preserve In The Proceedings In State Court The Constitutional Issues Which He Now Seeks To Assert. ..... 21

D. Petitioner Has Not Accurately Portrayed To This Court The Nature Of The "Right" Sought To Be Protected, Being His Right To Continue To Practice Law In The Method And Manner He Has Chosen. ..... 25

VII. CONCLUSION ..... 29

## TABLE OF AUTHORITIES

### *Cases*

*In re: Owen W. Crumpacker,* (1955) 235 Ind. 135, 130 N.E. 2d 775 ..... 13

*In re: Murray* (1977), 266 Ind. 221, 362 N.E. 2d 128, appeal dismissed, 54 L. Ed. 2d 777 ..... 19

*In re: Pawlowski* (1969), 240 Ind. 412, 165 N.E. 2d 595 .. 19



*In re: Smith* (1976), 266 Ind. 6, 361 N.E. 2d 1 ..... 19

*In re: Wireman* (1977), ..... Ind. ....., 367 N.E. 2d 1368 (Cert. denied) 56 L. Ed. 2d 402 ..... 19

*In re: Woodmar Realty Co.* (1961), 294 F. 2d 785 .. ..... 11, 12, 26

*Mancuso* v. *Indiana Harbor Belt Railroad, Appeal of Owen W. Crumpacker* (C.A. 7, 1978) 568 F. 2d 553 .. 13, 27

### *Statutes*

Burns Indiana Statutes Annotated Code Edition:

33-2-1-1 ..... 3, 19
33-2-1-3 ..... 4, 19
33-2-3-1 ..... 4, 19
33-2.1-2-1 ..... 4, 19
33-2.1-3-1 ..... 4, 19
34-5-2-1 ..... 5, 19

28 U.S.C. § 1257(3) ..... 2, 16, 17

### *Other Authorities*

Constitution of Indiana, Article 7, §§ 1, 4 ..... 3, 19

United States Supreme Court Rules:

19 ..... 2, 16
23, §10 ..... 13
23, §12 ..... 13
23, (1)(f) ..... 17, 21, 24
23, (1)(h) ..... 17
23, (4) ..... 18
24, (2) ..... 2, 16
38 (2) ..... 18
40 (1)(d)(1) ..... 9

Supreme Court of Indiana Admission and Discipline Rules 1, 4, and 23 ..... 7, 13, 19, 23, 24

Construction and Application of Rule 23 of Rules of Supreme Court Prescribing Requirements of Petition for Certiorari, 32 L. Ed. 2d 830 (1972) ..... 18

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

---

## No. 79-1127

---

**OWEN W. CRUMPACKER,**

*Petitioner,*

VS.

**INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT,**

*Respondents.*

---

**On Petition For Writ Of Certiorari To The Supreme Court Of Indiana**

---

## BRIEF FOR RESPONDENT SAUL I. RUMAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

---

### I.

### OPINIONS BELOW

The decision and opinion giving rise to Petitioner's application for a Writ of Certiorari was made and entered by the Supreme Court of Indiana on November

29, 1978. While said decision and opinion are not yet officially published and reported in the Indiana Reports, the same appear(s) at 383 N.E. 2nd 36 entitled *In the Matter of Owen W. Crumpacker.* The said decision and opinion is set out in Petitioner's Appendix at A20-A77. The effect of the subject decision and opinion was to disbar petitioner as an attorney in the State of Indiana. (The order of disbarment appears at A71).

## II.

## JURISDICTION

Petitioner asserts that this Court has jurisdiction to issue its Writ of Certiorari to review the disbarment proceedings in the Supreme Court of Indiana under the provisions of 28 U.S.C. § 1257(3).

Respondent respectfully objects to the exercise of jurisdiction of this Court to issue its extraordinary Writ of Certiorari in this matter for the reason that Petitioner has failed to set forth in the manner provided by the Rules, or otherwise, grounds invoking the jurisdiction of this Court, under either 28 U.S.C. § 1257(3) or Supreme Court Rule 19, all as more fully set out in the argument section of this Brief, *infra.* (Supreme Court Rule 24(2)).



## III.

## CONSTITUTIONAL PROVISIONS STATUTES AND RULES

Petitioner has set out in this corresponding section of his Petition for Writ of Certiorari at pages 4-6 thereof portions of amendments I and XIV to the Constitution of the United States and Article I, Bill of Rights, § 9-13, inclusive, and has cited, in addition thereto, (but not set out at length except in his Appendix) the Indiana Rules for Admission to the Bar and Discipline of Attorneys, the partial text of which is set forth in Petitioner's Appendix at A78 through A84.

Respondent, for his part, would additionally draw to the Court's attention the following pertinent provisions of the State of Indiana Constitution, Statutes and Rules:

(a) *Constitution of Indiana, Article 7.*

"§ 1. Judicial power.—The judicial power of the State shall be vested in one Supreme Court, one Court of Appeals, Circuit Courts, and such other courts as the General Assembly may establish. [As amended November 3, 1970.]"

"§ 4. Jurisdiction of Supreme Court.—The Supreme Court shall have no original jurisdiction *except in admission to the practice of law; discipline or disbarment of those admitted;* * * *" (Emphasis added)

(b) *Statutes*: References are to Burns Indiana Statutes Annotated Code Edition.

*33-2-1-1.* "The Supreme Court shall consist of five (5) judges, any three (3) of whom shall form a quorum and shall have jurisdiction in appeals coextensive with the state."

* * *

"*33-2-1-3.* [4-109]. Authority.—Such court shall have authority,

"First. To frame, direct and cause to be used, all process; to establish modes of practice which may be necessary in the exercise of its authority; and make regulations respecting the same, and cause them to be printed.

* * *

"Fourth. To establish regulations respecting proceedings which are requisite in such court in the exercise of its authority, not specially provided for by law. [2 R.S. 1852, ch. 1, § 5, p. 1.]"

* * *

"*33-2-3-1* [4-7405]. Admission to practice law—Restraint against unauthorized practice—Jurisdiction of Supreme Court.—The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state and exclusive jurisdiction to issue restraining orders and injunctions in all cases involving the unauthorized practice of the law under such rules and regulations as it may prescribe. [Acts 1931, ch. 64, § 1, p. 150; 1951, ch. 143, § 1, p. 382.]"

* * *

"*33-2.1-2-1* [4-7711]. Supreme Court—Judges—Quorum—Jurisdiction.—The Supreme Court shall consist of five [5] judges, any three [3] of whom shall constitute a quorum and shall have jurisdiction as provided by the constitution of Indiana. [IC 1971, 33-2.1-2-1, as added by Acts 1971, P.L. 427, § 3, p. 1979.]."

* * *

"*33-2.1-3-1* [4-7731]. Jurisdiction.—The Supreme Court shall adopt and publish rules in conformity with chapter 2 [33-2.1-2-1—33-2.1-2-7] of this article specifying the terms and conditions under which the Supreme Court and the Court of Appeals shall exercise jurisdiction. [I.C. 1971, 33-2.1-3-1, as added by Acts 1971, P.L. 427, § 4, p. 1979.]"



(c) *Indiana Supreme Court Rules*:

"In the Matter of the Adoption of Rules of the Court

"Whereas, this Court has inherent power to make rules of procedure and also has such power pursuant to the authority granted by the General Assembly of Indiana by Acts of 1937, ch. 91, § 1, p. 459,*

And Whereas, this Court received a proposed final draft of new Rules of Civil Procedure in October of 1968 from the Civil Code Study Commission of Indiana,

And Whereas, this Court thereupon referred this proposed final draft of new Rules of Civil Procedure to the Advisory Committee of this Court on Revision of Rules of Procedure and Practice for consideration and study and to receive suggestions from members of the Bar and legal community with reference to the new Proposed Rules,

And Whereas, the Committee of this Court on Revision of Rules of Procedure and Practice did report to this Court that it had completed its study of the new Proposed Rules and recommended that the Court adopt said Rules with some modification,

And Whereas, this Court immediately commenced its own study of the new Proposed Rules which study is now completed,

And Whereas, during the period of study by the Court, the Indiana General Assembly enacted

---

* 34-5-2-1 [2-4718]. Pleading and practice—Supreme Court authorized to adopt rules.—All statutes relating to practice and procedure in any of the courts of this state shall have, and remain in, force and effect only as herein provided. The Supreme Court shall have the power to adopt, amend and rescind rules of court which shall govern and control practice and procedure in all the courts of this state; such rules to be promulgated and to take effect under such rules as the Supreme Court shall adopt, and thereafter all laws in conflict therewith shall be of no further force or effect. * * *"

House Enrolled Act 1733 adopting the same new Proposed Rules with modification, said Act to become effective on and after January 1, 1970, which Act contained the following section recognizing the inherent power of this Court to amend the procedural rules contained in the enactment:

> 'SEC. 2. The General Assembly of the State of Indiana affirms the inherent power of the Supreme Court of Indiana to adopt, amend and rescind rules of Court affecting matters of procedure, and the General Assembly reaffirms the power given to the Supreme Court to adopt, amend and rescind rules of Court, including these rules of Court herein adopted, as set forth by the Acts of the General Assembly of 1937 at Chapter 91, Section.'

And Whereas, this Court has made additional modifications of the procedural rules contained in the said enactment, NOW THEREFORE,

IT IS ORDERED AND DECREED THAT

1. The compilation of procedural rules, appended to this Order, are hereby adopted as the Rules of Procedure of the Indiana Supreme Court, such rules to become effective immediately following midnight of the 31st day of December, 1969; and

2. The current rules of the Supreme Court of Indiana shall remain in effect until midnight on the 31st day of December, 1969, when they shall be abrogated and superceded by the appended rules; and

3. Section 3 of the enactment of the 1969 General Assembly of Indiana, entitled House Enrolled Act No. 1733, is set out herein in full and appended to this Order for use in determining which statutes have been specifically repealed by said enactment, which section this Court does not intend to affect in any manner by this Order; and



4. The rules appended to this Order shall supercede all procedural statutes in conflict therewith.

It is so ordered this 29 day of July, 1969.

ROGER O. DEBRULER
CHIEF JUSTICE"

* * * *

*Admission and Discipline Rule 1.*

"THE BAR OF INDIANA

"The bar of this state shall consist of all attorneys in good standing who, prior to July 1, 1931, were duly admitted to practice law by the circuit courts of this state, and all attorneys in good standing who, subsequently thereto, have been or hereafter shall be admitted to practice by this court."

* * * *

*Admission and Discipline Rule 4.*

"ROLL OF ATTORNEYS

"A record shall hereafter be made and entered on the order book of this court of the admission, enrollment, resignation, suspension, disbarment, reinstatement, and recertification of any and all members of the bar of this court. * * *"

* * * *

*Admission and Discipline Rule 23.*

"DISCIPLINARY COMMISSION AND PROCEEDINGS

"Section 1. General Principles

"Each person granted the privilege to practice law in this State has the obligation to conduct himself at all times in a manner consistent with the trust and confidence reposed in him by this Court and in a manner consistent with his duties and responsibilities as an officer or judge of the courts of this State. *This Court has exclusive jurisdiction of*

*all cases in which an attorney who is admitted to the bar of this Court or who practices law in this State* (hereinafter referred to as 'attorney') *is charged with misconduct.* The procedures hereinafter set forth shall be employed and construed to protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.

"The term 'attorney' as used in this rule shall include, in addition to all persons admitted to the bar of this Court, or who practice law in this State, any and all judges of any and all courts of this State now in existence or hereafter created or established."

* * * *

"Section 14. Proceedings Before the Hearing Officer

"(a) * * *"

"(b) * * *"

"(c) * * *"

"(d) * * *"

"(e) * * *"

"(f) Within thirty (30) days after the conclusion of the hearing, the hearing officers shall determine whether misconduct has been proven by a preponderance of the evidence and shall submit to the Supreme Court written findings of fact. Recommendations concerning the disposition of the case *may* be made by the hearing officer in his discretion. A copy of said findings and any recommendations shall be served by the hearing officer on the respondent and the Executive Secretary of the disciplinary commission at the time of filing same with the Supreme Court. (Emphasis added)

"(g) * * *"

"Section 15. Supreme Court Review

("a) The respondent, complainant or Commission shall have thirty [30] days after the filing of the



hearing officers findings and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty [30] days of the finding and recommendation of the hearing officer *the Supreme Court shall enter judgment or such other appropriate order in the premises.*

"(b) Upon receipt of written recommendation for suspension pending final determination of the cause, this Court may forthwith enter an order of suspension thereon. Respondent shall have fifteen [15] days thereafter to petition this Court for a review and a dissolution of such order.

"(c) *In the event that this Court grants a petition under this Section 15, briefs may be filed and oral arguments heard, as the Court shall determine.* Such briefs need not conform to the rules of this Court. Upon a review the *Court shall determine whether the findings and recommendations of the hearing officer or officers are supported by sufficient evidence and shall enter its judgment, with or without opinion as the Court shall determine.* (Emphasis added)

## IV.

## QUESTIONS PRESENTED FOR REVIEW

Petitioner's corresponding section is found at p. 3 of his petition, and sets forth three (3) "Questions Presented". It is respectfully submitted that petitioner's dissertations under this section are not sufficient to serve any purpose intended under Supreme Court Rule 40(1)(d)(1).

A study of the Indiana Law, set out in Section "III" hereof, *supra*, together with the decision and opinion of the Supreme Court of Indiana disbarring petitioner, as

well as the petition for Writ of Certiorari and accompanying appendix filed by petitioner, give rise to the following questions:

A.

IS PETITIONER'S MATTER, EITHER IN FORM OR IN SUBSTANCE, SUFFICIENT TO INVOKE THE JURISDICTION OF THIS COURT TO CONSIDER ISSUANCE OF ITS WRIT OF CERTIORARI?

B.

WAS PETITIONER DENIED OR DEPRIVED OF A "RIGHT" BESTOWED, GUARANTEED AND PROTECTED BY THE UNITED STATES CONSTITUTION WHEN THE SUPREME COURT OF INDIANA, ON REVIEW OF THE PROCEEDINGS BEFORE ITS HEARING OFFICER, DETERMINED TO DISBAR PETITIONER ON THE BASIS OF THE RECORD OF PROCEEDINGS AND BRIEFS FILED, WITHOUT AFFORDING FURTHER EVIDENTIARY HEARING, OR GIVING PETITIONER FURTHER NOTICE OF THE INDIANA SUPREME COURT'S INTENTION TO DISBAR?

C.

DID PETITIONER RAISE AND PRESERVE IN THE PROCEEDINGS IN STATE COURT THE CONSTITUTIONAL ISSUES WHICH HE NOW SEEKS TO ASSERT?

D.

HAS PETITIONER ACCURATELY PORTRAYED TO THIS COURT THE NATURE OF THE "RIGHT" SOUGHT TO BE PROTECTED, BEING HIS RIGHT TO CONTINUE TO PRACTICE LAW IN THE METHOD AND MANNER HE HAS CHOSEN.



## V.

## STATEMENT OF THE CASE

Petitioner's "STATEMENT OF THE CASE" appears on pp. 6-12, inclusive, of his petition. This statement is largely generalized allegation of a conclusory nature, but, more importantly, it is laced with inaccuracy and misrepresentation.

For example:

(a) At page 7 of his petition, Crumpacker asserts that a now deceased lawyer, Edmond J. Leeney, instituted informal proceedings against petitioner in the State Supreme Court by writing an ex parte letter to the Chief Justice on 1-27-72, and he goes on to say that up until that time he had never been charged with misconduct or unprofessional conduct of any kind. This simply is not true. The United States Court of Appeals for the Seventh Circuit, as far back as June, 1961, not only charged petitioner with misconduct, but found him guilty on the record in the case of *In re Woodmar Realty Company*,* 294 F. 2d 785, as follows:

> "From the foregoing summary of some pertinent parts of the record facts in this cause emerges a pattern of conduct which has characterized the actions of counsel [Crumpacker] for appellant in this case for some ten years. . . .
>
> "There is, however, more involved here than the time element, namely, *a vituperous tendency of counsel to read some heinous motive into the acts of anyone who dares to oppose him and of every judge who rules adversely to him*. . . .

* Full opinion is set out in Respondent's Appendix at pp. A47 to A66.

"We think that fact of timing is significant, and it is certainly consistent with the pattern which the record reveals of *charging both the dead and the living with fraud whenever an adverse ruling is contemplated or becomes a reality.*

"Although formal charges are confined to the trustee and his counsel, appellant's brief reveals that the *trial judges are not immune from similar attack. We abhor the insinuations that every trial judge, except the late Judge Parkinson, who has been burdened by this case since 1951, is either a blundering idiot, or, impliedly, a tool of some heinous scheme.* Those insinuations cannot be justified by anything which appears of record. Moreover, they are apparently motivated by the same lack of honesty which is apparent in the circumstances surrounding Judge Swygert's order disqualifying himself.

. . .

"We find nothing of factual averment, but a wealth of conclusionary statements which lead invariably *to counsel's vitriolic conclusions that appellees, who dare to oppose him, are guilty of heinous misdeeds.*

* * *

"Because we are convinced that the record in this case *presents a contemptible, if not contemptuous, abuse of the legal processes of a federal court,* we have dwelt at length upon a historical resume of the record facts as they have come to our attention. We did that advisedly in order that there may be no mistake that we are cognizant of the nature and severity of the question with which we deal. *We find a sordid picture of the repeated use of ill-founded charges of fraud as a trial tactic which is foreign to established concepts of honest and ethical advocacy.* We want it clearly understood that repetition of that practice as disclosed by this record will not be tolerated in the futute.



(b) Judge James T. Moody in the case of *Bryant v. Klaas,* Lake Circuit Court, No. C 71-1384, found Owen W. Crumpacker in conflict of interest in bringing the action in that case. (See Respondent's Appendix, pp. A29 to A42.)

(c) Judge Albin Smith found Owen W. Crumpacker in contempt of court for keeping funds and files of a client he was not entitled to in the case of *State v. Kushner,* LaPorte Circuit Court, Cause No. C36721-C. (See Respondent's Appendix, pp. A45 to A46.)

(d) See *In re: Owen W. Crumpacker* (1955) 235 Ind. 135, 130 N.E. 2d 775 and *Mancuso v. Indiana Harbor Belt Railroad, Appeal of Owen W. Crumpacker* (1978, C.A. 7) 568 F. 2d 553. (Respondent's Appendix, pp. A67 to A74.)

(e) Owen W. Crumpacker continues in his misrepresentation of the Statement of the Case and with suggestions of impropriety on page 7, by stating:

> "The complaint was prepared with the assistance of two Hammond attorneys, Kenneth D. Reed and Harold Abrahamson, associates and partners of petitioner, practicing with him prior to January 13, 1973, . . ." There is no evidence in the record to support that allegation.

The record shows that the disciplinary proceedings were commenced by the filing of a complaint *by the Indiana Supreme Court Disciplinary Commission,* pursuant to admission and descriptive Rule 23, Section 12.

(f) Petitioner complains on page 8 that he was never interviewed or requested to furnish any evidentiary matter. Rule 23, § 10 provides a detailed method for investigatory procedures which were followed to the letter in the case below.

Petitioner fails to point out that he responded in detail and made no complaint that there was any defect in that procedure, which simply precedes the submission of materials to the Disciplinary Commission to determine if the Disciplinary Commission desires to proceed with discipline against an attorney. Petitioner's next statement that he first learned that formal charges were made against him in the Supreme Court from the filing of the Verified Complaint in the Supreme Court as published in the *Indianapolis Star* and the *Gary Post-Tribune* on September 18, 1974, is again an effort to distract the Court from the true issues.

Petitioner's statement that , "[o]n November 9, 1976, Judge Douglas, the Hearing Officer, entered his findings of fact, conclusions of law, and recommendations. (All in petitioner's favor)." is not an accurate statement of the hearing officer's decision. Judge Douglas' findings of fact are contrary to his conclusions and require disciplinary action. The Supreme Court has repeatedly stated that the hearing officer does not bind the Supreme Court, but rather simply makes findings and recommendations, the Supreme Court reviews the record and makes its own original findings and decision as to discipline. Petitioner's statement that he was "found innocent" is not consistent even with the hearing officer's findings where a reading of the findings will show that he was found guilty, but the conduct excused or forgiven in most cases. The Supreme Court did not take such a forgiving attitude, and a review of their findings based upon the evidence in the record makes it obvious that the conduct was serious, repetitive and that the discipline of petitioner was demanded by his conduct.



Again, on page 11, petitioner misrepresents that the Supreme Court did not act upon respondent's Petition for Review. The Supreme Court did grant respondent's Petition for Review and received extensive briefs from petitioner herein, as well as respondent.

Petitioner further misstates the record in stating that "Neither of the respondents challenged the Hearing Officer's findings . . ." Respondent, in detail, challenged the Hearing Officer's findings and conclusions and recommendations as required, and as the record shows.

A full evidentiary hearing having already been had, (with the full right of presentation of witnesses and cross-examination, issuance of subpoenaes, etc.) no further similar proceedings were held, by the Supreme Court of Indiana. Rather, a review of the record of the hearing on discipline, including a complete transcript of the hearing, including evidence, arguments (the briefs were several volumes in length), and every issue petitioner herein would present was before the Supreme Court when it made its findings of fact and conclusions of law, and entered its order of disbarment. No issues were raised or preserved by petitioner as to any of the issues raised on pages 10, 11 and 12 of his petition.

## VI.

## ARGUMENT

### A.

### PETITIONER'S MATTER IS NOT, EITHER IN FORM OR IN SUBSTANCE, SUFFICIENT TO INVOKE THE JURISDICTION OF THIS COURT TO CONSIDER ISSUANCE OF ITS WRIT OF CERTIORARI.

*Supreme Court Rule 24(2)* states, in part, that:

"* * * Objections to the jurisdiction of the court to grant writs of certiorari may be included in briefs in opposition to petitions therefor."

*Supreme Court Rule 19* provides, in part, as follows:

*"Considerations governing review on certiorari*

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

*28 U.S.C. § 1257* provides, in pertinent part, as follows:

*"State courts; appeal; certiorari*

Final judgments or decrees rendered by the highest court of a State in which a decision can be had, may be reviewed by the Supreme Court as follows:

* * * *



(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

Petitioner has asserted, only in conclusory fashion, that under the United States Constitution he had a protected right to have a separate, second and independent evidentiary hearing before the Supreme Court of Indiana, upon notice, before that Court could lawfully disbar him. However, petitioner has failed to cite any Federal or State constitutional provision, statute, case precedent, rule or regulation, in support of his conclusions. The authorities cited, set forth, and relied upon, by this Respondent, in Section "III" of this brief, clearly outlined the Rules, substantive and procedural, for dealing with matters of discipline of attorneys. Nowhere in the petition has petitioner, by factual reference or by case citation, maintained that such rules are unconstitutional on their face, or that such rules were not followed by the Indiana Supreme Court. Therefore, inasmuch as no other or further record of proceedings of the State Court matter is before this Court, it is respectfully submitted that no question is presented, much less a "substantial" federal question. It necessarily follows that petitioner has failed to invoke the jurisdiction of the Court.

The petition is deficient for failure to comply with Rule 23, and, more particularly, for failure to comply with Rule 23, (1)(f) and (h). Pursuant to provisions of

Rule 23(4) petitioner's failure is, in itself, a sufficient reason for denying the petition. A collection of cases under former Rule 38(2) can be found in CONSTRUCTION AND APPLICATION OF RULE 23 OF RULES OF SUPREME COURT PRESCRIBING REQUIREMENTS OF PETITION FOR CERTIORARI, 32 L. Ed. 2d 830 (1972).

**B.**

**PETITIONER WAS NOT DENIED OR DEPRIVED OF A "RIGHT" BESTOWED, GUARANTEED AND PROTECTED BY THE UNITED STATES CONSTITUTION WHEN THE SUPREME COURT OF INDIANA, ON REVIEW OF THE PROCEEDINGS BEFORE ITS HEARING OFFICER, DETERMINED TO DISBAR PETITIONER ON THE BASIS OF THE RECORD OF PROCEEDINGS AND BRIEFS FILED, WITHOUT AFFORDING FURTHER EVIDENTIARY HEARING, OR GIVING PETITIONER FURTHER NOTICE OF THE INDIANA SUPREME COURT'S INTENTION TO DISBAR.**

Indiana Supreme Court Rules governing the disciplining of attorneys are in no way unique or novel as written, or as administered in this case.

Petitioner's contention, when boiled down to its sparest form, is that the rules should have entitled him to an oral, evidentiary hearing before the Indiana Supreme Court, as a condition precedent to disbarment, where the Hearing Officer had not concluded misconduct warranting discipline. One can always make the bare allegation, as petitioner does, that he had those rights under the letter or spirit of the rules. But a fair, simple reading of the rules fails to support such an assertion.

The petitioner's contentions could only have merit, if at all, if and in the event the State Supreme Court was strictly a court of error in disciplinary matters, where, as a purely appellate tribunal, it had to accept findings



of fact, if proved by sufficient evidence, as true, and view them in a light most favorable to the appellee, and simply reverse and grant a new trial, for plain error arising on the record and briefs, properly raised and preserved below.

However, that is not the role of the State Supreme Court in disciplinary matters. By constitution, statute, rule and case precedent, the Supreme Court is a court of not only exclusive, but original and final jurisdiction in such matters.

Constitution of Indiana, Article 7. (Text in Section "III", *supra*)

Burns' Indiana Statutes, Annotated Code Edition: 33-2-1-1; 33-2-1-3; 33-2-3-1; 33-2.1-2-1; 33-2.1-3-1; 34-5.2-1 (text in Section "III" *supra*)

Supreme Court of Indiana Admission and Discipline Rules 1, 4, and 23. (Text in Section "III", *supra*)

*In re: Wireman* (1977) ..... Ind. ....., 367 N.E. 2d 1368 (Cert. denied, 56 L. Ed. 2d 402;

*In re: Murray* (1977) 266 Ind. 221, 362 N.E. 2d 128, appeal dismissed, 54 L. Ed. 2d 777;

*In re Pawlowski* (1959) 240 Ind. 412, 165 N.E. 2d 595;

*In re: Smith* (1976) 266 Ind. 6, 361 N.E. 2d 1.

It is clear from an examination of the foregoing that disciplinary proceedings start and end only with the Supreme Court, whether the hearing officer's findings are favorable or unfavorable. *Rule A.D. 23, § 15, (a), supra,* (last sentence), shows that the Supreme Court must enter an order on the hearing officer's findings whether unfavorable or favorable, *even if they're not challenged by either party to the controversy.*

Petitioner has not placed before this Court the record of proceedings in the State Court to factually support his

assertions regarding "notice" and an opportunity to be "heard" before the Indiana Supreme Court. However, petitioner does reprint, in his Appendix, the decision and opinion of the State Court disbarring him as an attorney. And this opinion makes reference to certain telling facts:

(a) That petitions for review *were* filed under Rule A.D. 23, 15; (App. A20)

(b) That Crumpacker acknowledged this filing by submission of objections and supplemental objections; (App. A20)

(c) That all sides filed full briefs on the merits; (App. A20)

(d) That the State Court separately considered decided and wrote an opinion, not only on the merits, but upon Crumpacker's motions and objections as well; (App. A21-A26).

(e) The Supreme Court then went on to comment that:

> "The remaining portion of the petitions for review filed by the Disciplinary Commission and the complainant, and the objections and supplemental objections filed by the Respondent concern the substantiation of alleged acts of misconduct and the factual and legal conclusions to be drawn from the factual findings. These issues are resolved through the review process employed by this Court in disciplinary matters. Ultimate findings of fact upon which a determination of misconduct is weighed are reached through a complete examination of all pleadings, including the transcript. The findings of the Hearing Officer are considered; however, they are not controlling on this Court. *In re Wireman, Supra, In re Murray, Supra, In re Pawlowski,* (1959) 240 Ind. 412, 165 N.E. 2d 595." (App. A27)



Hence, contrary to petitioner's allegations, he was granted full "notice" and a full opportunity to be heard, and, moreover, he took full advantage of those opportunities. Petitioner was even permitted to have custody, pending review, of the documentary exhibits in the case (outside the 4700 page record of testimony). As noted by the Supreme Court:

> "Although stating that he would do so and although being requested to do so on several occasions, the Respondent has failed to return the exhibits placed in his custody and care." (App. A28)

Therefore, it is respectfully submitted that there is no rule of law granting petitioner a right to more notice or hearing before the Indiana Supreme Court than that with which he was afforded, nor does the United States Constitution require that petitioner be afforded greater rights than those afforded under the rules, and taken advantage of, by petitioner.

C.

**PETITIONER DID NOT RAISE AND PRESERVE IN THE PROCEEDINGS IN STATE COURT THE CONSTITUTIONAL ISSUES WHICH HE NOW SEEKS TO ASSERT.**

The only references in the petition for writ (or the petitioner's Appendix) having to do with petitioner's "efforts" to raise his "substantial federal question" in the State proceedings (as required under Rule 23(1) (f) and numerous case precedents), appear at p. 12 of his petition. At this point, petitioner refers the Court to certain allegations in certain motions he filed which are *partially* reproduced in the accompanying Appendix. (Motions filed both before and after the hearing before the Hearing Officer and the proceedings before the

State Supreme Court). Petitioner's references are to Appendix, pp. A85-A112; A21, 22; A113-115; A1, 2.

An examination of each of these references reveals as follows:

(1) *A85-A112*: This is a pre-hearing motion to dismiss addressed to the hearing examiner which nowhere raises the issue of the lack of jurisdiction of the Supreme Court to view a case and reach a conclusion different from that of the hearing officer. Rather, well into the prehearing motion, and commencing at A96, petitioner commences to address his "constitutional" objections to each count of the multi-count verified complaint. His first statement in rhetorical paragraph "(7)" of the motion at A96 is broad form and conclusory wherein he said he hasn't been afforded certain rights. These "rights" do not exist under any pre-trial law and ordinarily occur only *at* a trial and not prior to a trial. Then, for the next several paragraphs (A96-100) petitioner states the conclusion that the Disciplinary Procedures are such as to violate his right under the Fourteenth Amendment, but he doesn't say how. Rather, he gives his version of his squabble with an attorney named Ed Leeney in a lawsuit they had together.

Then petitioner abandons his constitutional complaints for a couple of pages and resumes at A102-104 where he merely quotes various constitutional provisions without reference to any facts. *There then ensues for the next several pages of this reference (A105-112) a detailing by petitioner of the various counts filed against him where he maintains that the facts alleged can't be the subject of charges of professional misconduct because each set of facts also constitutes either a crime or a contempt of court, and that being the case, he's entitled to be tried in criminal court, or for contempt, where he'd have more*



*constitutional rights to be protected, and therefore is immune from culpability or redress for professional misconduct.*

Needless to say, these arguments were not asserted in the State Supreme Court, nor are they urged in this Court.

(2) The next reference is to A21,A22, which simply consists of the first two (2) pages of the State Supreme Court's opinion where the Court recites that petitioner has asserted that his constitutional rights were violated and that Disciplinary Rule 23 violates these rights, but without setting out any specifics.

(3) The next reference, A113-A115, consists of printed *excerpts* from a *post* disbarment motion filed by petitioner where he asserted—after disbarment—that, under the 1st and 14th Amendments to the United States Constitution, he was entitled (under Disciplinary Rule 23, § 15, A and D) to a hearing and notice before the Supreme Court as a condition precedent to the disbarment order. Disciplinary Rule 23, § 15, had a subparagraph "(a)" when the hearing officer's "findings" were filed in 1976 which provided as follows:

> "(a) the respondent, complainant or Commission shall have thirty [30] days after the filing of the hearing officer's finding and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty [30] days of the finding and recommendation of the hearing officer *the Supreme Court shall enter judgment or such other appropriate order in the premises.*" (Emphasis added)

However, sub-paragraph "(d)" was not added until some time later, but was effective when the disbarment opinion was entered on November 29, *1978*. This subparagraph read as follows in 1978:

"(d)" The complainant and the respondent shall be given not less than fifteen (15) days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him and to produce at the hearing and require the production of evidence and witnesses in his own behalf at the hearing, as in civil proceedings. All subpoenas or other proceedings and all notices connected with processing of such complaint shall be issued only under the direction of the hearing officer or hearing officers, and no other court or judicial officer of this State shall have jurisdiction to issue any orders or processes in connection with a disciplinary complaint."

*Nowhere in Rule 23, § 15, in sub-paragraphs "(a)" or "(d)", or anywhere else, is petitioner accorded a right to notice or a further evidentiary hearing before the Supreme Court, except the notice of rights and time limits for petitions and briefs, and the "hearing" afforded by such writings.*

(4) The final reference, A1, A2, consists of the Indiana Supreme Court's order denying petitioner post-decision motions, and nowhere is there any reference made to constitutional arguments or questions.

Hence, it is respectfully submitted that the petition and supporting appendix, which is all that petitioner has placed before this Court, fail to demonstrate that any federal question was presented to the state court, at any stage of the proceeding, or in any manner contemplated under the requirements of Supreme Court Rule 23(1)(f).



D.

**PETITIONER HAS NOT ACCURATELY PORTRAYED TO THIS COURT THE NATURE OF THE "RIGHT" SOUGHT TO BE PROTECTED, BEING HIS RIGHT TO CONTINUE TO PRACTICE LAW IN THE METHOD AND MANNER HE HAS CHOSEN.**

Petitioner asserts, inter alia, in various and sundry places and stages in his Petition for Writ of Certiorari as follows:

(a) That he ". . . had never been charged with misconduct of any kind, either by way of misdemeanor, felony, or otherwise, nor had any steps been instituted against him before any official or unofficial body charging him with unprofessional conduct." (Petition for Writ, page 7)

(b) "Petitioner was found innocent on each of the 20 counts of alleged professional misconduct made against him." (Petition for Writ, pages 9-10.)

(c) "The practice of law is accorded by the courts. It is not a matter of right of every citizen. However, once granted and exercised (as in this case for nearly 40 years) an attorney has the right to continuance of practice." (Petition for Writ, page 13)

(d) "Here, petitioner is a member of the Federal bar, and its component district and circuit court bars, as well as the Supreme Court of the United States. It is certain that at some time following this Court will be called upon to consider and rule upon a 'Federal disbarment' of Crumpacker."

(e) "A close critical examination of the total record below discloses that the 'misconduct' charged against the accused was discourtesy between counsel, and more properly a 'dispute' of one kind or another which first

was with his law office partners, and then which was enlarged and involved others."

* * *

"None of the acts and incidents should have been elevated to the level of a 'grievance'."

* * *

"Conduct which may be discourteous, noisome, or the like, even if disapproved by others, even a court, but which is absent of fraud and which does not evidence moral turpitude." (Petition for Writ, page 22)

(f) "The Supreme Court of Indiana should not deprive the petitioner of his standing before the courts." (Petition for Writ, page 23)

In other words, petitioner is trying to persuade this Court that the "right" sought to be protected before this Court to practice law in the Courts of the State of Indiana is a "right" which petitioner has held for 40 years, and which he has treated with the greatest reverence although sometimes he might be considered a touch overzealous, or noisome. An examination of the record tends to show that the "right" which petitioner is asking this Court to defend and protect at the cost and expense of the public, bench and bar in the State of Indiana is a "right" which petitioner has abused in a most vicious fashion imaginable for many years last past. The record shows in fact that petitioner has used a "right" to practice law as a sword to maliciously inflict grievous injury upon anyone and everyone who he determines, rightfully or wrongfully, to be his adversary.

As early as 1961 the Seventh Circuit Court of Appeals in the case of *In re Woodmar Realty Company*, 294 F. 2d 785, actually adjudicated petitioner's propensity for



doing violence to his "right" to practice law. (The quotes from the Woodmar Realty Company case are set forth in *Section V, STATEMENT OF THE CASE*, supra.)

But there are yet further documented examples of the petitioner's use of his sacred "right" to practice law. As previously mentioned in this brief, Crumpacker was found guilty of representing conflicting interests in the case of *Bryant v. Klaas*, decided in the Lake Circuit Court, Cause No. C 71-1384. (The Court's findings and order are reprinted at length in the Respondent's Appendix tendered herewith at pp. A29 to A42.)

Similarly, Judge Alban Smith of the LaPorte Circuit Court found Crumpacker guilty of contempt and ordered him incarcerated for wrongfully withholding a client's funds and files and then disobeying a Court order to return them to the client. (The Court's orders are reprinted in Respondent's Appendix tendered herewith at pp. A43 to A46.)

As recently as 1978, the Seventh Circuit Court of Appeals again had occasion to consider the conduct of Crumpacker in the case of *Mancuso v. Indiana Harbor Belt Railroad* (Appeal of Owen W. Crumpacker) 568 F. 2d 553. (Reprinted in Respondent's Appendix tendered herewith at pp. A71 to A74.) In that case, Federal Judge Eschbach entered an order requiring Crumpacker to show cause why he should not be suspended from the practice of law for wrongfully failing to conclude a settlement made mid-trial charging his adversary with fraudulently inducing Crumpacker to enter into the settlement. The decision of the Indiana Supreme Court disbarring Crumpacker and the Court's written opinion thereon are set forth at length in petitioner's own Appendix at pages A20-A77. A reading of that Opinion

discloses misconduct (by citation to the record of proceedings proper) so gross and abusive as to almost defy description.

The Hearing Officer essentially found that the misconduct charged had occurred, but that in his opinion such conduct only showed that petitioner "can be a difficult man; one who has pushed and bullied Judges and attorneys for years." (Petitioner's Appendix, page A18)

All through the Indiana Supreme Court's opinion, as found in petitioner's Appendix, references are made by specific quotes to the kind of statements petitioner had made to people in the course of his practice of law. In fact, the Supreme Court paused to notice, by direct quotes from the record of proceedings, the attitude exhibited by petitioner during the course of conduct of the disciplinary proceedings before the Hearing Officer. (See petitioner's Appendix, pages A72-A76.) Of course, there's more . . . much, much more . . . , but to interject those matters would be to proceed dehors the record. One would think that the foregoing record citations would be sufficient unto themselves. The ineluctable conclusion to be drawn from the foregoing is that the petitioner in this proceeding is asking the United States Supreme Court to exercise its sound discretion to issue its extraordinary writ to preserve and protect a "right" of an attorney to continue the kind of practice of law which is exhibited by the foregoing references, a right which petitioner himself has abused for years, a right which should be considered both sacred and noble, but which petitioner has besmirched in grotesque fashion.

It is respectfully submitted that it would be fitting that petitioner's own misconduct preclude him from consideration by this Court.



## VII.
## CONCLUSION

Petitioner has failed to invoke the jurisdiction of the Supreme Court of the United States. He has failed to preserve or present to the Court any substantial Federal question and has failed to demonstrate by record or by argument any right to review. No case is presented for the exercise by the Supreme Court of its sound discretion to issue its extraordinary Writ of Certiorari in the case at bar.

Respectfully submitted,

SAUL I. RUMAN
Attorney at Law
5261 Hohman Avenue
Hammond, Indiana 46320
*Respondent Pro Se*

Supreme Court, U. S.
FILED
NOV 27 1979
MICHAEL RODAK, JR., CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-403

OWEN W. CRUMPACKER,

*Petitioner,*

*vs.*

INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT

*Respondents.*

## PETITION FOR WRIT OF CERITIORARI TO THE SUPREME COURT OF INDIANA

## PETITIONER'S BRIEF IN REPLY TO RESPONDENTS' BRIEFS

(APPENDIX ATTACHED)

Andrew G. Kohlan, Esq.
236 Rice Creek Blvd.
Fridley, MN 55432
Attorney for Petitioner

Page

TABLE OF CONTENTS


I. OPINIONS BELOW.....2

II. JURISDICTION.....5

III. QUESTIONS PRESENTED.....5

IV. CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT RULES INVOLVED.....6

V. STATEMENT OF THE CASE.....6

VI. ARGUMENT.....7

VII. CONCLUSION.....21


TABLE OF AUTHORITIES

Cases


Ball v. U. S. (1896) 163 U.S. 662, 16 S.Ct. 1192.....18

Bayliss v. Johnston (1943) 48 F.Supp. 758.....15

Bedford v. Hol-tan Co. 140 App. Div. 282, 125 NYS 178.....17

Broderick v. Saretsky (1942) 178 Misc. 424, 34 NYS2d 941.....17

Committee v. Crary (1976-Iowa) 245 NW2d 298.....17

Commonwealth v. Ramey (1939) 279 Ky 810, 132 SW2d 342.....19

Cutler v. Wall (1869) 9 R.I. 264.....17

Eastman Kodak Co. v. Richards, 123 Misc. 88, 34 NYS2d 941.....17

Ex parte Garland (1867) 4 Wall 333, 18 L.Ed. 366.....14





Furman v. State Bar of California 12 Cal. 212, 83 P.2d 12, 21.....14

Gerald v. State 99 Fla. 662, 127 So. 309, 369 ALR 699.....14

Gillespie v. State (1907) 168 Ind. 298, 80 NE 829.....18

Ginger v. Circuit Court for County of Wayne (1967) 372 F.2d 621.....16

Glenn v. Mitchell 71 Colo. 394, 207 P. 84.....17

Golden v. State Bar 213 Cal. 237, 2 P.2d 325, 329.....14

Green v. U. S. (1957) 355 U.S. 184, 78 S.Ct. 221.....18

Greene v. McElroy (1959) 360 U.S. 474, 79 S.Ct. 1400.....16

In the Matter of John Ruffalo, Jr. (1968) 390 U.S. 544, 88 S.Ct. 1222.....14, 15

In re Feingold (1972-Me.) 296 A.2d 492.....16

In re Gault (1967) 387 U.S. 1, 84 S.Ct. 1428, 12 L.Ed.2d 527.....14

In re Houghton 67 Cal. 511, 517, 8 P. 52, 57.....14

In re LeTarte v. Bd. of Education (1970) 316 NYS 178.....17

In re MacNeil (1959) 266 F.2d 167.....16

In re Noell 21 F.Supp. 397.....15

In re Noell (C.C.A.) 93 F.2d 5.....16

In re Oliver (1948) 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682.....15

In re Pawlowski (1959) 240 Ind. 412, 165 NE2d 595.....9, 11

In re Smith (1976) ___Ind___, 351 NE2d 1.....11, 12

In re Teitlebaum (1958) (7th Cir.)
253 F.2d 2.....16

Kepner v. U.S. (1904) 195 U.S. 100,
24 S.Ct. 797.....18

Konigsberg v. State Bar of California (1957)
353 U.S. 252, 77 S.Ct. 722.....16

Malloy v. Hogan (1964) 378 U.S. 1,
84 S.Ct. 1489, 12 L.Ed.2d 653.....14

Matter of Perrillo (1979) ___Ind.___,
386 NE2d 174.....20

Morhouse (Warden) v. Supreme Court of N.Y.
(1944) 283 NY 131, 56 NE2d 79.....15

New Jersey R & T Co. v. Suydam 7 N.J. Law 25.....17

O'Neill v. United Ass'n of Journeymen Plumbers
(1944) 348 Pa. 531, 36 A.2d 325.....20

Peabody v. Kaufman (1946) 61 NYS2d 313.....19

People v. Goldfarb (1912) 152 App. Div. 870,
138 NYS 62.....19

People v. Merril (1935) 156 Misc. 637,
282 NYS 809.....19

People v. Murphy (1935) 244 App. Div. 382,
280 NYS 405.....19

Rueb v. Rehder (1918) 24 N.M. 534,
174 P. 992.....20

Schware v. Board of Bar Examiners (1957)
353 U.S. 232, 77 S.Ct. 352.....16

Selling v. Radford (1917) 243 U.S. 46,
37 S.Ct. 77, 612 L.Ed. 585.....15

Smith v. Board of Education 174 Ga. 735, 739
164 SE 41, 43.....17

Spevak v. Klein (1967) 385 U.S. 511,
87 S.Ct. 625, 17 L.Ed.2d 574.....14



State ex rel. Florida Bar v. Bass (1958)
106 S2d 77.....14

State v. Evjue (1949) 254 Wisc. 581,
37 NW2d 50.....19

State v. Gardner (1954) 233 Ind. 566,
122 NE2d 88.....19

State v. Hall (1877) 58 Ind. 512.....18

State v. Huebner (1954) 233 Ind. 566,
122 NE2d 88.....19

State v. Robbins (1943) 221 Ind. 25,
46 NE2d 691.....18

State v. Sierp (1973) 260 Ind. 57,
292 NE2d 245.....19

Theard v. United States (1957)
354 U.S. 278, 77 S.Ct. 1274,
12 L.Ed.2d 1342.....15, 16

U. S. v. Sanges (1892) 144 U.S. 310,
12 S.Ct. 609.....18

Willmer v. Comm. on Character & Fitness
(1963) 373 U.S. 96, 83 S.Ct. 1179,
10 L.Ed. 29.....16

Wilson v. Sanders 151 SE2d 705.....17

Statutes

Ind. Code, Constitution

Article I, § 12.....6

Article I, § 14.....6

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1979

No. 79-403

OWEN W. CRUMPACKER,
Petitioner,
vs.
INDIANA SUPREME COURT DISCIPLINARY COMMISSION and
SAUL I. RUMAN, COMPLAINANT,
Respondents.

---

On Petition For Writ Of Certiorari To
The Supreme Court Of Indiana

---

# REPLY OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI (Appendix Attached)

---

To the Supreme Court of the United States of America, and the Honorable Justices thereof, and each individually.

Respectfully, Petitioner replies:



## I

## OPINIONS BELOW

Respondent(s) except to the determination entered by the Honorable Judge Bruce W. Douglas (of the Indiana courts) on November 9, 1976, and his determination noted "Findings of Fact, Conclusions of Law, and Recommendations of Hearing Officer." (Such determination by the Hearing Officer is part of the opinions below.) It reads (in part):

> "The undersigned was appointed Hearing Officer, qualified and assumed jurisdiction."
>
> "This case is decided on the merits of each count." (Then a finding and determination on each count.)
>
> "In conclusion the Hearing Officer has found for Owen W. Crumpacker, the Respondent."

Such trial court hearing officer is appointed under Rules provided, established, and promulgated, for proceedings toward discipline and disbarment of an attorney at law (of Indiana).

The trial hearing officer(s) is provided under Rule 23 A & D § 11(b). He is empowered and charged with a "duty" "to hear and determine said charges." (See Rule 23, § 11(b) thereof). The

"determination" is in "Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer." They constitute the "determination" (to be made); they are the "order" and "judgment" of the trial court judge, as in a matter tried without a "jury"; they are a determination "equal" and of the same lawful and constitutional weight in law as a "verdict of the jury". (Underlining supplied)

Other sections and provisions of the Rules read consistent therewith (e.g. see Rule 23 A & D, Indiana Rules):

> § 14(e) provides: "The proceeding may be summary in form and shall be without the intervention of a jury and shall be reported."
>
> § 14(d) provides: "...and no other court or judicial officer of this State shall have jurisdiction to issue any orders or process in connection with a disciplinary complaint." (Underlining supplied)

The hearing officer(s) limited in numbers not to exceed three (3). (Rule 23, § 11(b) thereof.)

Under such Rules (particularly Rule 23 § 14(f), formerly § 14(d) thereof) the trial court hearing officer(s) has exclusive jurisdiction and the duty: "to determine whether misconduct has been proven by a preponderance of the evidence."

The Court (as well) under other provisions of the Rule has provided for, empowered, and authori-



zed a "dismissal" of a "grievance" (charge) under and upon earlier consideration and "determination" made thereto by the Disciplinary Commission and the Executive Secretary of the Commission. (See Rule 23, § 10(a) thereof.)

The power and duty to "determine" charges of "misconduct" given to a hearing officer is part of the total powers and duties assigned by the Supreme Court of Indiana in matters of Admission and Discipline. (See the Rules relating to Admissions and Examination, particularly Rule 12, Committee on Character and Fitness; Rule 12, Board of Law Examiners, and duties and powers of Executive Secretary and Disciplinary Commission, Rule 23, §§ 10, 11.)

For respondent(s) to except and assert here that the "Findings of Fact, Conclusions of Law, Recommendations of the Hearing Officer" entered by Hon. Judge Bruce W. Douglas on November 9, 1976, are not part of the judgments and opinions below is to deny to this Honorable Supreme Court of the United States that which reveals the "true facts" upon actions of the Indiana Supreme Court taken by order made and entered by such Indiana court on November 29, 1978.

## II

## JURISDICTION

The jurisdictional requisites are adequately set forth in the petition. The issue presented is justiceable. The petitioner asserts (by disbarment) he has been deprived of liberty and property without due process of law, in violation of rights under the Constitution of the United States, and as well the Common Law of Indiana, its Constitution, and Rules of Court. This is denied by respondents. A controversy exists.

## III

## QUESTIONS PRESENTED

The Commission accedes in the same (as stated by the petitioner). This may be sufficient. (Ruman interjects his own. Whether proper that he so do.) Petitioner submits answers to each:

A - Yes C - Yes

B - Yes D - Yes (first part only)

Question "D" (given) is stated in two (2) parts; the latter part (following after the word "protected") is not a question; it is an assertion (in "innuendo"); it is improper. Petitioner would deserve self-censure should he engage thereon. No



response is made.

## IV

## CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT RULES INVOLVED

Ruman invites attention to additional provisions. Petitioner accepts the same: e.g. Indiana Constitution:

> Article I, § 12. All courts shall be open; and every man, for injury done him in his person, property, or reputation, shall have remedy by due course of law.....
>
> Article I, § 14. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.....

## V

## STATEMENT OF THE CASE

Contrary to the assertions made by the respondents, petitioner is correct in his statement of the case. In substance petitioner was "tried" in a disbarment proceeding and was "acquitted" by the "trial court".

By "fiction" of "review" before the Supreme Court of Indiana, respondents effect of record a

disbarment of petitioner. Petitioner's lawful rights are wholly suppressed, and wholly denied, without due process of law, by error in the Supreme Court of Indiana.

By extended remarks, not material to the issues herein, Ruman by comment upon the Statement of the Case as made by petitioner has in his Answer obviously has attempted to "poison the wells" against the petitioner. Petitioner's simple reply to Ruman need be only that the trial hearing officer received all which was properly part of the record, and made his "determination" on all the record to "exonerate" Crumpacker of all claims against him and "acquit" him of all charges of misconduct.

Ruman's comments mislead and are not the true facts in full. To the extent petitioner may further find need of any reply to the same they will be entered and extended, if at all, and contained in an appendix, as may be attached. (Reply App. A1-A6)

VI

ARGUMENT

Petitioner is entitled to relief and grant of a Writ of Certiorari, for reasons as follows:

First: PETITIONER WAS ACQUITTED BY THE TRIAL HEARING OFFICER; JEOPARDY ATTACHED.



Second: PETITIONER WAS DENIED DUE PROCESS.

(a) Actions by Indiana Supreme Court following after acquittal were denial of due process, and without jurisdiction.

(b) Such acts were in denial of due process, and made and taken without notice, and an opportunity to be heard.

Third: PETITIONER HAS NO FURTHER MEANS OF REDRESS IN INDIANA.

Fourth: PROCEDURES OR TECHNICAL ERRORS OUGHT NOT TO DEFEAT CONSTITUTIONAL AND FUNDAMENTAL RIGHTS.

Petitioner states also upon the argument as follows:

In the instant case, the court of Indiana denied to petitioner total due process of law, and indulged in "double jeopardy" against petitioner, contrary to law, the Federal Constitution, the Common Law of Indiana, the Constitution of the State of Indiana, and its own Court Rules. All was in contradiction of the acquittal at Crumpacker's trial.

Never has petitioner waived his rights; never has he consented to, or submitted in any way to disbarment. Such disbarment is wholly "void". It was taken without jurisdiction, and was made without notice, hearing, and opportunity by petitioner

(Crumpacker) to be heard (then) before the Indiana Court (itself); it should be declared "void".

The procedural rules effective in 1976 through 1978 and the present were adopted June 23, 1971. (under order of court, made prior to the Code of Professional Responsibility.) The Code was adopted on the 8th day of March, 1971. The Rules of Discipline were then amended. The June 1971 amendment completely changed the form and content of Rule 23 (Admission and Discipline). This is the statement made and contained in the compiler's notes, in the Rules Compilation contained in Burns' Indiana Statutes Annotated.

In re Pawlowski (1959), 240 Ind. 412, 165 NE2d 595, is cited prominently by the Indiana Supreme Court in its opinion on the order disbarring Crumpacker (dated November 29, 1978). It is used by the Court now to illustrate its so-called proceedings and the nature of review, upon a hearing officer's "Findings of Fact", etc. The Pawlowski case occurred (however) in 1959. This was at a time when the requirements in a disciplinary proceeding were (then) contained in the Indiana court rule described as Rule 3, § 3-21 to 3-25 inclusive. These rules were abrogated in 1969 and superceded by the new rules which are currently in effect.

Under the rule, in 1959 the hearing was before a "Commissioner". He was authorized and empowered under Rule 3-24 only "to hear and report the evidence and to make findings of fact, to which exceptions may be taken", etc. Under such rule, the "Commissioner" was not authorized, nor empowered, and under no duty to make a "determination" upon the "charges" of "misconduct" against the accused. The function of Commissioner then was to (simply) "hear and report the evidence and to make findings of fact". This is far short of, and does not include determination upon the charges, or an adjudication of the case, "upon the merits of each count". After 1969, when the current rules first came into effect, the power and duty placed upon and assigned to the Hearing Officer was to "determine the charges" and "shall determine whether misconduct has been proven by a preponderance of the evidence". This power and duty then assigned is that of a trial judge sitting in the place of a jury, and empowered and under duty to determine the charges and (in effect) "render a verdict".



To permit the Indiana Supreme Court, under Rule 23 A & D, as now present and existing on November 9, 1976, to proceed in a "purported" review upon the "determination" made by the Hon. Bruce W. Douglas and to allow a review wholly contrary to, "ignoring" the "exoneration" and "acquittal" of Crumpacker as "determined and adjudged" by such Judge Douglas, is to allow the

State of Indiana to "appeal" a "verdict of acquittal" in favor of the accused. This is not what the rules allow. If the rules did so allow, they are and would be UNCONSTITUTIONAL.

To suggest (as the Commission and Ruman do) that in "review" the Court of Indiana can "ignore" and wholly "negate" an "acquittal" rendered by the trial hearing officer in a determination of charges made against an accused attorney, is to wholly misconceive the purport and content of the current Indiana Rules. They fail to recognize the nature of the proceedings; that they are "accusatory" and "quasi-criminal" in form and content.

For the Commission and Ruman to rest upon a "format" of the proceedings as stated and illustrated in the 1959 case of In re Pawlowski, supra, is error. It misleads THIS Court. That case arose and proceeded under (old) Rule 3-21, etc., which is no longer law.

To proceed then thus upon the "foundation" of Pawlowski and any "bricks" "laid in place" thereafter and to rest a present case upon Pawlowski and any of the "bricks" following puts a house upon a "false bottom". It is certain to result in time in "collapse".

To the best ability of petitioner to find, (except for In re Smith) none of the decisions cited



by respondents concerned a "discipline" by the Supreme Court of Indiana following upon an "acquittal" made by the trial hearing officer. In each instant there was initially a "conviction" made by the trial hearing officer. In In re Smith (1976), ___Ind.___, 351 NE2d 1, the discipline order was a simple "reprimand" (which Smith apparently accepted). No claim or comment thereon is noted in the opinion, and apparently no question relative to "jeopardy" was raised by Smith. (This, obviously, does not constitute a construction of the court of the rule upon the law.) (Now) that the Supreme Court of Indiana may have previously (already) "erred" upon its own rules, does not validate and justify a continuance of error and a denial of due process, when a challenge is made.

To continue the construction of the rules as given by respondents (if intended) runs counter to the plain common sense meaning of the language of the rules. It would give a construction that is invalid as counter to the Common Law of the State of Indiana, the Indiana Constitution, and the United States Constitution relative to "due process" and "double" or "former" jeopardy. It would countenance a "criminal appeal" by the State upon the "fact issue" of an "acquittal".

At best, in a criminal case, the State of Indiana allows "an appeal" on the "law" only for

the purposes of "guidance on the law". No appeal is allowed upon the "verdict".

At all times, the Indiana Supreme Court knew and was aware that Crumpacker considered the proceedings against him as wholly unjustified and unlawful; and that upon the merits and upon the proceedings had, the disbarment made was in violation of his rights under law and the Constitution, Federal and State, the Court Rules themselves, and the Common Law of Indiana as well. After entry of disbarment on November 29, 1978, the Indiana court persisted in its actions against Crumpacker and totally ignored his demands for hearing and reconsideration.

This application, for a Writ of Certiorari, by Crumpacker, as well (too) was communicated and made known to the Indiana Supreme Court, duly and at the time that Crumpacker requested an extension from this Court to file his application for Writ of Certiorari, to enable the Indiana court to give Crumpacker a hearing and reconsideration of its order of disbarment. Petitioner asserts that in this case that in truth no "lawful grounds" for disbarment exist. As stated by the trial hearing officer, the Honorable Judge Bruce W. Douglas, "It was evident from the start that this proceeding wasn't the typical disbarment hearing."



Petitioner respectfully submits that support for this petition and the claims of petitioner for a Writ of Certiorari herein is found in the following authorities:

A DISBARMENT PROCEEDING IS (in substance) "QUASI-CRIMINAL". (See):

Ex parte Garland (1867) 4 Wall 333, 18 L.Ed. 366

In the Matter of John Ruffalo, Jr. (1968), 390 U.S. 544, 88 S.Ct. 1222

Spevak v. Klein (1967) 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574

Furman v. State Bar of California, 12 Cal. 212, 83 P.2d 12, 21

In re Houghton, 67 Cal. 511, 517; 8 P. 52, 57

Golden v. State Bar, 213 Cal. 237; 2 P.2d 325, 329

cf. In re Gault (1967) 387 U.S. 1, 84 S.Ct. 1428; 12 L.Ed.2d 527

cf. Malloy v. Hogan (1964) 378 U.S. 1; 84 S.Ct. 1489; 12 L.Ed.2d 653

NOT ONLY THE ACT CHARGED, BUT THE BAD OR FRAUDULENT MOTIVE MUST BE PROVED. (See):

Gerald v. State, 99 Fla. 662; 127 So. 309; 369 ALR 699

State ex rel. Florida Bar v. Bass (1958) 106 S2d 77; (Power to disbar an attorney should be exercised only in a clear case, for weighty reareasons, and on clear proof and not

arbitrarily or lightly, or with passion or prejudice.

THE ATTORNEY (accused) MUST HAVE PRIOR NOTICE OF THE "CHARGES" OF MISCONDUCT, AND MUST KNOW (before acting) THAT HIS ACTS ARE MISCONDUCT (as essential to due process). (See):

In the Matter of John Ruffalo, Jr. (1968) 390 U.S. 544, 88 S.Ct. 1222

In re Oliver (1948), 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682

SHAM AND PRETENSE OF A HEARING IS NOT DUE PROCESS. (See):

Morhouse (Warden) v. Supreme Court of N.Y. (1944), 283 NY 131, 56 N.E.2d 79

JUDGMENT WITHOUT JURISDICTION IS VOID. (See):

Bayliss v. Johnston (1943), 48 F.Supp. 758

THE ATTORNEY AT LAW IS ENTITLED TO DUE PROCESS, NOTICE, AND OPPORTUNITY TO BE HEARD BEFORE THE COURT (itself—which makes the order of disbarment). (See):

Selling v. Radford (1917), 243 U.S. 46, 37 S.Ct. 77, 612 L.Ed. 585

Theard v. United States (1957), 354 U.S. 278, 77 S.Ct. 1274, 12 L.Ed.2d 1342

In re Noell, 21 F.Supp. 397



In re Noell (C.C.A.) 93 F.2d 5
(Hearings before commissioners were not hearings before the Court, and briefs filed subsequent to the order were not the equivalent of a hearing by the Court on the merits.)

In re Teitlebaum (1958) (7th Cir.), 253 F.2d 2

In re Feingold (1972-Me.), 296 A.2d 492

In re MacNeil (1959) 266 F.2d 167

cf. Greene v. McElroy (1959) 360 U.S. 474, 79 S.Ct. 1400

THE CONSTITUTION OF THE U. S. OPERATES ON AN "APPLICANT" FOR ADMISSION TO THE BAR, AND AS WELL DISCIPLINE; RELIEF FROM THE U. S. SUPREME COURT IS BY WRIT OF CERTIORARI. (See):

Theard v. U. S. (1957) 354 U.S. 271, 77 S.Ct. 1274, 12 L.Ed.2d 1342

In re MacNeil (1959) 266 F.2d 167

Ginger v. Circuit Court for County of Wayne (1967) 372 F.2d 621

Willmer v. Comm. on Character & Fitness (1963) 373 U.S. 96, 83 S.Ct. 1179, 10 L.Ed. 29

Schware v. Board of Bar Examiners (1957) 353 U.S. 232, 77 S.Ct. 352

Konigsberg v. State Bar of California (1957) 353 U.S. 252, 77 S.Ct. 722

THE FUNCTION OF "TO HEAR AND DETERMINE" means "TO DECIDE" and "ADJUDICATE"; (not just to "hear and report". (See):

Broderick v. Saretsky (1942) 178 Misc. 424, 34 NYS 2d 941

Eastman Kodak Co. v. Richards, 123 Misc. 88, 204 NYS 249

Wilson v. Sanders, 151 S.E.2d 705

Smith v. Board of Education, 174 Ga. 735, 739 164 S.E. 41, 43

Committee v. Crary (1976-Iowa) 245 N.W.2d 298

New Jersey R & T Co. v. Suydam, 7 N.J. Law 25

Bedford v. Hol-tan Co., 140 App. Div. 282, 125 NYS 178

In re LeTarte v. Bd. of Education (1970), 316 NYS 781

Glenn v. Mitchell, 71 Colo. 394, 207 P. 84

Cutler v. Wall (1869), 9 R.I. 264
("The rules of the Court giving him (the referee) the power to hear and determine the matter in controversy made him a judge of the rights of the parties, and gave him powers to decide all questions of law or of fact arising in the hearing of the cause, and his power is to give a final determination of the controversy by the submission of the parties to his judgment, he is constituted a court of competent jurisdiction." (Underlining supplied.)

THE PRINCIPLE OF "FORMER" JEOPARDY (at times recited as "double jeopardy") ATTACHES AND APPLIES TO ANY PROCEEDING, CRIMINAL, CIVIL, QUASI-CRIMINAL,



OR WHATEVER, (proceeding concerned) UNDER AMERICAN COMMON LAW, THE COMMON LAW OF THE STATE OF INDIANA, THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE STATE OF INDIANA. (See):

Gillespie v. State (1907), 168 Ind. 298, 80 N.E. 829 (Constitutional provision relating to "former jeopardy" is construed to be affirmation of existing Common Law.)

Green v. U. S. (1957), 355 U.S. 184 78 S.Ct. 221

U.S. v. Sanges (1892), 144 U.S. 310, 12 S.Ct. 609 (Appeal is not allowed to the State, neither under Common Law, nor the judiciary act, upon a verdict of acquittal, or upon a determination by the Court of an issue of law.)

Ball v. U.S. (1896) 163 U.S. 662, 16 S.Ct. 1192 (A general verdict of acquittal is a bar to a second indictment.)

Kepner v. U.S. (1904), 195 U.S. 100, 24 S.Ct. 797 (Former jeopardy is a bar; an acquittal bars second jeopardy for the same offense.)

State v. Hall (1877), 58 Ind. 512 (Statute allowing appeal in cases of acquittal was not intended that court should review questions of fact decided in the court below, and court on appeal has no power over the verdict on acquittal.)

State v. Robbins (1943), 221 Ind. 25, 46 N.E.2d 691

State v. Sierp (1973), 260 Ind. 57, 292 NE2d 245

State v. Huebner (1954), 233 Ind. 566, 122 NE2d 88

State v. Gardner (1954), 233 Ind. 566, 122 NE2d 88

People v. Murphy (1935), 244 App. Div. 382, 280 NYS 405

People v. Merril (1935) 156 Misc. 637, 282 NYS 809

State v. Evjue (1949), 254 Wisc. 581, 37 NW2d 50, (directed verdict of acquittal. "An appeal from an an acquittal, under statute authorizing a state to take a writ of error from rulings and decisions adverse to the State upon all questions of law arising on trial in criminal cases, would violate double jeopardy provisions of Constitution.")

Commonwealth v. Ramey (1939), 279 Ky 810, 132 SW 2d 342

People v. Goldfarb (1912), 152 App. Div. 870, 138 NYS 62

Peabody v. Kaufman (1946), 61 NYS2d 313 (a statute giving right of appeal to the State from an acquittal after trial for a criminal offense is unconstitutional. An organization, such as a labor union, cannot by its own governmental legislation or administrative acts transcend fundamental rights of individual members guaranteed by public law an natural justice.)



Rueb v. Rehder (1918), 24 N.M. 534, 174 P. 992 (if a member of a society is once acquitted on a trial upon charges preferred against him, he cannot be tried again for the same offense, unless the by-laws of the association specifically authorize a second trial.)

O'Neill v. United Ass'n of Journeymen Plumbers (1944), 348 Pa. 531, 36 A.2d 325 (A member of a a voluntary association may obtain relief from a court against conduct which is without color of authority and which is flagrantly in violation of fundamental laws.)

THE SUPREME COURT OF THE STATE OF INDIANA BY ITS (own) ORDER OF DISBARMENT BARS THE ATTORNEY FROM PRACTICE BEFORE THE FEDERAL COURTS WITHIN THE STATE.

Matter of Perrillo (1979), ___ Ind. ___, 386 NE2d 174 (This decision appears to contravene Selling v. Radford, supra, and In re Noell, supra, and cases following the decisions there which assert that the power and authority upon disbarment from the Federal courts is in the Federal courts themselves.)

## CONCLUSION

It once was said:

> "If the dignity of the law is to be upheld, it must be upheld first by those who administer it; where there is rout and shout, no wisdom prevails, order is lost; judgment in the law should never be rendered in passion, bias, and prejudice."

The trial hearing officer found for petitioner (herein) Crumpacker on the "merits of each count", and "determined" that the charges made against Crumpacker had not been proven; to him, "it was evident from the start that this proceeding wasn't the typical disbarment hearing"; that Crumpacker did not violate professional responsibility (the Code); and that in all his actions herein Crumpacker (acted and) "has done so as an advocate and with honesty."

The application and the Writ of Certiorari should in all things Be Granted.

Respectfully submitted,

Andrew G. Kohlan, Esq.
236 Rice Creek Boulevard
Fridley, Minnesota 55432
(612) 574-0426

Attorney for Petitioner

# APPENDIX

PETITIONER'S REPLY APPENDIX

PETITIONER'S REPLY TO SPECIFIC POINTS
IN THE ANSWER OF THE COMMISSION AND RUMAN

Re: Commission's Answer, p. 5, 6, etc.

a. The issue of "jeopardy" was apparently never raised and "ruled on" in In re Smith (1976) ___Ind___, 351 NE2d 1.

b. The Court Clerk is the lawful and official custodian of the Court records. He is under duty to note and make record of all documents received and filed in his office, and as well the "disposition" both "temporary" and "final" of any part of the "Records" and "Files" in his office. The Court records speak for themselves and the Court can act only upon its Records (and not otherwise). When there is an absence of "record" there is no lawful record. If there is and has been an inadvertent "error" or "ommission" in the Record, the Court is competent to correct the record, to state and correct the facts (within the limit of time and circumstance, as allowed under law for the Court to do). To petitioner's best knowledge, and inquiry made, no "correction" has been made of the Clerk of Court's Records in the instant case to reflect a "transmittal" of the



Record Documents concerned. That "copies" thereof may in some way be used, such still is not upon the Records as such. When the Record of the Clerk reflects no "Transmittal", a party may stand upon the Record. The burden is on the party who makes claim that the "facts" are other and different from what the Record shows.

c. With respect to a "due process notice and hearing", a so-called "hearing" upon a "transcript" and "briefs" is not adequate and sufficient "hearing" before the Court. The hearing and appearance must be in person. This is the substance of the United States Supreme Court's decision in Selling v. Radford (1917) 243 U.S. 46, 37 S.Ct. 77, 612 L.Ed. 585, and the Federal Court decisions in In re Noell (CCA) 93 F.2d 5 and cases recognizing the validity of the rule stated therein.

Re: Ruman Answer, pp. 11 through 15.

a. The Woodmar Realty Company case involves losses of millions of dollars by fraud committed upon clients of Crumpacker, one being an aged widow, presently at age of 93 years. This case has incurred notoriety for the large amount of money involved which was lost by "fraud" over the years. That Crumpacker is willing to give continued honest

effort to seek "recovery" of losses sustained by his clients serves not to his "discredit", but to his "merit", as an advocate in long continuing zealous representation of those who often most need legal assistance. That others would rather that the matter be placed in a "grave" out and "away" from sight, does not obtain a "recovery" to those who were the victims of a fraud.

b. The document placed and put forward as that of Judge James T. Moody in Bryant v. Klaas was never "signed", and to this date contains no signature. (It apparently was "suggested" by adverse parties to said Judge Moody, but never in fact adopted by him. It serves only to "prejudice" the true facts.)

c. The case of State v. Kushner involves and eminates from a dispute and claims between Crumpacker's former legal partners and himself, relative to the representation to be made and continued in certain land condemnation cases. The matter currently is in the process of arbitration, and is one of the sources of dispute between lawyers themselves.

d. The Mancuso case (Ruman Answer, p. 13) demonstrates at worst "stubborness" upon the part of two legal advocates in "conflict". The sum of $240.00 was there by Ruman, an attorney, claimed to be due him as part of "sanctions" for "delay"



in completing a settlement. The dispute affected only the attorneys, not any client.

e. The dispute between Reed and Abrahamson (former associates and partners of Crumpacker) with Crumpacker has caused substantial "innuendo" and "rumor" about the Hammond community. The dispute and these proceedings arose about the same time; "adverse comment" generated in the community gave apparent substance to "rumor" and "gossip". Both Crumpacker on his part and Reed and Abrahamson on their part have been the subject of "common rumors" which perhaps do not stand upon the facts. The impression made should be corrected.

f. Petitioner states and submits that in his sincere opinion he has, from time to time, received adverse newspaper publicity relative to this proceeding; in each instance in a manner, as a "trial" by newspaper which was adverse tc his reputation, and reflected upon his sincerity and honesty as a lawyer. All without being first heard upon the same. In this respect, it is of interest here to note the "words" of the trial Hearing Officer, Hon. Bruce W. Douglas, which is a part of his "determination" made on November 9, 1976, in favor of Crumpacker in this matter, to-wit: "This case is decided on the merits of each count." (see Petitioner's Appendix, p. A6) Then, to-wit: "In conclusion, the Hearing Officer has found for Owen W. Crumpacker, the Respondent." (See Petitioner's Appendix, p. A18)

Then in the same paragraph: "He has done so as an advocate and with honesty."

Starting at Petitioner's Appendix p. A7 through and including A18 there is recited the determination of the Hearing Officer as made and noted by such Hearing officer on each Count. In each instance, the Hearing Officer determined that Crumpacker had committed no violation. Following such determination and immediately following the determination noted upon Count XIX (See Petitioner's Appendix p. A18) the trial Hearing Officer stated, "In conclusion, the Hearing Officer has found for Owen W. Crumpacker, the Respondent." For Ruman to contend that the findings and conclusions of law are not "in favor of" Crumpacker, as if on an "acquittal", is an obvious failure on the part of Ruman himself to understand and accept the trial Hearing Officer's determination herein.

g. On page 14 of the Ruman Answer, Ruman claims the conclusions made by the Hon. Bruce W. Douglas are contrary to the facts. Petitioner respectfully submits that the Hon. Judge Douglas was the duly appointed trial Hearing Officer. His decision is on both the "law and the facts." He has, in substance, "acquitted" Crumpacker of all charges. This is an "adjudication" on the "merits" of each Count. This proceeding is quasi-criminal. No lawful appeal or review can be made contrary to



such "acquittal" to contravene contravene the determination made.

h. Relative to Ruman (and his exceptions noted on page 15 of his Answer), petitioner submits that Ruman is in error. Crumpacker is not in accord. Such communications as Crumpacker received at any time were never with respect to any hearing allowed "in person" following on and after November 9, 1976. Again, to the extent that any action to be taken by the Supreme Court of Indiana on November 29, 1978, was opposite to and contrary to the determination made by Judge Douglas on November 9, 1976, it was contrary to "due process". The least requirement was a "then current hearing" to be provided (on or about November 29, 1978). The Court could not in all good conscience act some 25 months later (without any real notice and hearing whatever) with respect to and upon a record of a hearing provided two years earlier, certainly not if the Court were then to act negatively upon such records in a quasi-criminal proceeding, to the detriment of an attorney.